

COPY

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: COACHELLA VALLEY WATER DISTRICT;
(AVISO AL DEMANDADO): COUNTY OF RIVERSIDE; and DOES 1-25,
inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RANDALL C. ROBERTS, individually and as Trustee of the Roberts Family
Trust Dated November 17, 2010, on Behalf of Himself and All Others Similarly
Situating

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

NOV 30 2018

D. MURILLO

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: Riverside Historic Courthouse
(El nombre y dirección de la corte es): 4050 Main Street
Riverside, CA 92501

CASE NUMBER:
(Número del Caso) **1825310**

RIC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jeffrey Lee Costell, Costell and Cornelius Law Corporation
1299 Ocean Avenue, Santa Monica, CA 90401, (310) 458-5959

DATE:
(Fecha)

NOV 30 2018

Clerk, by
(Secretario)

D. MURILLO Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Items 1–6 below must be completed (see instructions on page 2).

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

☐ BANNING 311 E. Ramsey St., Banning, CA 92220
☐ BLYTHE 265 N. Broadway, Blythe, CA 92225
☐ HEMET 880 N. State St., Hemet, CA 92543
☐ MORENO VALLEY 13800 Heacock St., Ste. D201, Moreno Valley, CA 92553

☐ MURRIETA 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563
☐ PALM SPRINGS 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262
☒ RIVERSIDE 4050 Main St., Riverside, CA 92501
☐ TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591

RI-030

<p><small>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address)</small> Jeffrey Lee Costell SBN 93688 Costell and Cornelius Law Corporation 1299 Ocean Avenue, STE 450 Santa Monica, CA 90401</p> <p>TELEPHONE NO: (310) 458-5959 FAX NO. (Optional): (310) 458-7959 E-MAIL ADDRESS (Optional): jlcostell@costell-law.com ATTORNEY FOR (Name): Randall C. Roberts</p> <p>PLAINTIFF/PETITIONER: Randall C. Roberts, et. al.</p> <p>DEFENDANT/RESPONDENT: Coachella Valley Water District, et. al.</p>	<p><small>FOR COURT USE ONLY</small></p> <p>FILED</p> <p>SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE</p> <p>NOV 30 2018</p> <p>D. MURILLO</p> <hr/> <p>CASE NUMBER: RIC 1825310</p>
<p>CERTIFICATE OF COUNSEL</p>	

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

- ☐ The action arose in the zip code of: _____
- ☐ The action concerns real property located in the zip code of: _____
- ☒ The Defendant resides in the zip code of: 92501

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 1.0015 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date November 30, 2018

Jeffrey Lee Costell
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)



(SIGNATURE)

COPY

JEFFREY LEE COSTELL (SBN 93688)
JOSHUA S. STAMBAUGH (SBN 233834)
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

NOV 30 2018

D. MURILLO

Attorneys for *Petitioners and Plaintiffs*
Randall C. Roberts, Individually and as Trustee of the
Roberts Family Trust dated November 17, 2010, on
Behalf of Himself and All Others Similarly Situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

RANDALL C. ROBERTS, Individually and
as Trustee of the Roberts Family Trust Dated
November 17, 2010, on Behalf of Himself
and All Others Similarly Situated,

Case No.

RIC

CLASS ACTION 1825310

Petitioners and Plaintiffs,

v.

COACHELLA VALLEY WATER
DISTRICT; COUNTY OF RIVERSIDE;
and DOES 1-25, inclusive,

Respondents and Defendants.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND FOR REFUND AND/OR
RESTITUTION**

Petitioner/Plaintiff Randall C. Roberts, individually and as trustee of the Roberts Family Trust Dated November 17, 2010 ("Petitioner"), on behalf of himself and all others similarly situated, brings this action against Respondents/Defendants Coachella Valley Water District ("CVWD") and County of Riverside (the "County") (collectively, "Respondents") and hereby alleges and avers as follows:

INTRODUCTION

1. Petitioner brings this action as a class action under the provisions of *Code of Civil Procedure* §382 on behalf of himself and all other members of the class (the "Class") for,

1 among other things, a writ of mandate pursuant to *Code of Civil Procedure* §1085 directing
2 Respondents to: (a) vacate the unlawful ad valorem property taxes imposed on Petitioner and
3 the Class purportedly for paying CVWD's contractual obligations to fund the California State
4 Water Project (the "SWP Taxes"); (b) cease and desist in the collection and enforcement of the
5 unlawful SWP Taxes; and (c) restore to the Petitioner and the Class any and all monies that
6 have been unlawfully charged and collected as SWP Taxes, in an amount according to proof at
7 trial but, in any event, in excess of this Court's minimum jurisdiction. In addition, the
8 Petitioner and the Class are entitled to damages, restitution, declaratory relief, injunctive relief,
9 attorneys' fees and costs as prayed for herein. This Petition and Complaint is for any and all
10 damages and causes of action for that time period which goes as far back in the past as is
11 provided for or allowed by applicable statutes of limitation or other applicable law (as
12 extended, tolled or limited by applicable doctrines or other applicable law including, but not
13 limited to, equitable tolling, fraud, concealment, waiver, estoppel and/or continuing harm) and
14 extending through the present and continuing into the future, for so long as Respondents have
15 imposed and continue to impose the SWP Tax on the Petitioner and the Class.

16 2. As alleged in this Petition and Complaint, the SWP Taxes are unlawful, invalid,
17 void and/or unconstitutional under Article XIII of the California Constitution, including
18 without limitation Propositions 13, 26 and/or 218, and/or other applicable law and policy.
19 Moreover, the unlawful SWP Tax scheme disproportionately benefits agricultural property
20 owners and water users (including members of the CVWD's Board of Directors) to the
21 damage and detriment of the Petitioner and the Class, who are non-agricultural property
22 owners, by effectively forcing them to subsidize agricultural water use and business
23 operations.

24 **THE PARTIES**

25 3. At all times relevant herein, Petitioner is and was an individual and a trustee of
26 the Roberts Family Trust Dated November 17, 2010, with his principal residence located
27 within the Coachella Valley in Riverside County, California.

28 4. At all times relevant herein, CVWD is and was a public agency of the State of

1 California organized and operating under the County Water District Law (*Water Code* §30000
2 *et seq.*) and the Coachella District Merger Law (*Water Code* §33100 *et seq.*), that furnishes
3 water to approximately 107,000 customers within the Coachella Valley including, without
4 limitation, Petitioner and the Class.

5 5. At all relevant times herein, the County was and is a public agency organized
6 and existing under the laws of the State of California that bills and collects property taxes from
7 property owners within the County including, without limitation, Petitioner and the Class.

8 6. Petitioner is ignorant of the true names and capacities of the
9 respondents/defendants sued herein as Does 1-25 and, therefore, Petitioner sues those
10 respondents/defendants by such fictitious names. Petitioner will amend this Petition and
11 Complaint to allege their true names and capacities when they are ascertained. Petitioner is
12 further informed and believes, and based thereon alleges, that Does 1-25, inclusive, are
13 responsible in some manner for the breaches, acts and omissions complained of herein and that
14 Petitioner's claims, injuries and damages may have been, at least in part, proximately caused
15 by such breaches, acts and omissions.

16 **JURISDICTION AND VENUE**

17 7. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
18 jurisdiction is proper in the Superior Court of California, County of Riverside.

19 8. Venue is proper in this judicial district pursuant to *Code of Civil Procedure* §§
20 395(a) and 395.5 because Respondents reside in the County of Riverside, Petitioner's injuries
21 occurred in the County of Riverside, and Respondents' liability arose in the County of
22 Riverside.

23 **GENERAL ALLEGATIONS**

24 9. Petitioner owns the domestic real property situated at 49790 Desert Vista Drive
25 in Palm Desert, California (the "Property") and resides at the Property. At all relevant times
26 herein, the Property is and was located within the County of Riverside and CVWD's service
27 area. As such, Petitioner is and was subject to domestic property taxes and other charges
28 imposed and/or collected by the County and/or CVWD including, without limitation, the SWP

1 Taxes.

2 10. In 1960, the voters in California approved the Burns-Porter Act to provide for
3 the financing and construction of the California State Water Project (“SWP”). The SWP
4 includes a water development and conveyance system that collects, stores and transfers water
5 to various contracting water agencies throughout the State of California, including CVWD.

6 11. Under the Burns-Porter Act, the revenue that a local water district generates to
7 pay its SWP contractual obligations can only be used for the following voter-approved
8 purposes, in the following order of priority: (a) for the reasonable costs of annual maintenance,
9 operation, and replacement of the system; (b) to repay the principal or interest on Burns-Porter
10 bonds; (c) to reimburse the California Water Fund for funds used for construction of the State
11 Water Facilities; and, if there is any surplus revenue, (d) for the construction of new water
12 system facilities.

13 12. As noted in a California Attorney General Opinion, the Burns-Porter Act
14 expresses a preference for funding SWP-related expenses through water charges rather than
15 taxation “in that it provides that the state system would be supported primarily by the sale of
16 water and power...The Legislature and the voters clearly contemplated an essentially closed,
17 self-supporting system...The ballot argument in favor of the Burns-Porter Act echoed this
18 preference: ‘The program will not be a burden on the taxpayer; no new state taxes are
19 involved; the bonds are repaid from project revenues, through the sale of water and power. In
20 other words, it will pay for itself.’” (61 Ops.Cal.Atty.Gen. 373 (No. CV 78-90, Aug. 18,
21 1978) (quoting Voters Pamphlet, Nov. 8, 1960, p.3).)

22 13. Although the Burns-Porter Act contemplates that local taxes may be required to
23 pay SWP obligations, the authority to levy such taxation “is expressly limited to situations
24 where it is necessary...Similarly, the contract with the Metropolitan Water District authorizes
25 taxation only where revenue from the sale of water proves insufficient: ‘If any year the
26 District fails or is unable to raise sufficient funds by other means, the governing body of the
27 District shall levy upon all property in the District not exempt from taxation, a tax or
28 assessment sufficient to provide for all payments under this contract then due or to become due

1 within that year.”” (*Id.* (quoting Metropolitan Water District of Southern California contract,
2 article 34(a).)

3 14. On or about March 29, 1963, CVWD entered into that certain Water Supply
4 Contract with the State of California Department of Water Resources regarding the SWP, and
5 Petitioner is informed and believes and based thereon alleges that said contract has been
6 updated and amended since that time. The Water Supply Contract, together with any updates,
7 amendments or related agreements, are referred to herein as the “SWP Contracts.” Like the
8 Burns-Porter Act, the terms of the SWP Contracts only permit water districts such as CVWD
9 to levy taxes to pay for SWP expenses if the districts fail or are unable to raise sufficient funds
10 by other means in a given year.

11 15. In derogation of the principles outlined above, Respondents have imposed, and
12 continue to impose, illegal ad valorem property taxes on Petitioner and the Class to raise
13 revenue for expenses purportedly relating to the SWP. On or about March 12, 2013, CVWD
14 adopted Resolution No. 2013-36 in order to increase ad valorem SWP Taxes from a rate of
15 \$0.08 to \$0.10 per hundred dollars of assessed property valuation, and Respondents have
16 continued to assess and collect the SWP Taxes through the present. As set forth herein, these
17 SWP Taxes not only violate the Burns-Porter Act and CVWD’s SWP Contracts but also
18 Article XIII of the California Constitution, including without limitation Propositions 13, 26
19 and/or 218 and/or other applicable law.

20 16. Proposition 13 was approved by California voters in 1978 in order to limit ad
21 valorem property taxes (i.e., taxes on property owners based on the value of their respective
22 properties). Prior to the passage of Proposition 13, each local government could set or levy its
23 property tax rate annually. Under Proposition 13, this was changed so that a property’s overall
24 ad valorem tax rate for all local governments is limited to one percent (1%) of the property’s
25 taxable value.

26 17. Section 1(b) of Proposition 13 further provides that the one percent (1%) tax
27 limitation “shall not apply to ad valorem taxes or special assessments to pay the interest and
28 redemption charges on any indebtedness approved by the voters prior to [July 1, 1978].”

1 Thus, Proposition 13 restricted ad valorem property taxes while still honoring already-
2 approved debts.

3 18. To raise revenue for obligations which were not approved prior to Proposition
4 13, ad valorem property taxes must be capped at one percent (1%). *See Howard Jarvis*
5 *Taxpayers Ass'n v. County of Orange* (2003) 110 Cal.App.4th 1375, 1384. "Preexisting
6 obligations are the exception to Proposition 13; therefore, they must be specific, real, and
7 existing. If they are not, the tax is barred." *Id.* Indeed, the exception to Proposition 13's one
8 percent (1%) tax limit "is a safety net; it is not an open checkbook." *Id.* at 1387.

9 19. Proposition 218 (also known as the "Right to Vote on Taxes Act") was
10 approved by California voters in 1996. Among other things, Proposition 218 states that "local
11 governments have subjected taxpayers to excessive tax, assessment, fee and charge increases
12 that not only frustrate the purposes of voter approval for tax increases, but also threaten the
13 economic security of all Californians and the California economy itself. This measure protects
14 taxpayers by limiting the methods by which local governments exact revenue from taxpayers
15 without their consent." It further states that the proposition should be liberally construed "to
16 effectuate its purposes of limiting local government revenue and enhancing taxpayer consent."

17 20. Pursuant to Proposition 218, "general" taxes require approval from a majority
18 of registered voters and "special" taxes require approval from two-thirds of registered voters.

19 21. In 2010, Proposition 26 was enacted to provide a more specific definition of
20 state and local "taxes." Under Proposition 26, all revenue measures imposed by local
21 governments are "taxes" unless the measure falls within one of the following seven
22 enumerated exemptions:

- 23 a. A charge imposed for a specific benefit conferred or privilege granted directly
24 to the payor that is not provided to those not charged, and which does not
25 exceed the reasonable costs to the local government of conferring the benefit or
26 granting the privilege.
- 26 b. A charge imposed for a specific government service or product provided
27 directly to the payor that is not provided to those not charged, and which does
28 not exceed the reasonable costs to the local government of providing the service
or product.
- c. A charge imposed for reasonable regulatory costs to a local government for

1 issuing licenses and permits, performing investigations, inspections, and audits,
2 enforcing agricultural marketing orders, and the administrative enforcement and
adjudication thereof.

- 3 d. A charge imposed for entrance to or use of local government property, or the
4 purchase, rental, or lease of local government property.
- 5 e. A fine, penalty, or other monetary charge imposed by the judicial branch of
6 government or a local government, as a result of a violation of law.
- 7 f. A charge imposed as a condition of property development.
- 8 g. Assessments and property-related fees imposed in accordance with the
9 provisions of Article XIII D.

10 22. In order to qualify for the “property-related fees” exception, the charge must
11 comply with the following Proposition 218 requirements: “(1) Revenues derived from the fee
12 or charge shall not exceed the funds required to provide the property related service. (2)
13 Revenues derived from the fee or charge shall not be used for any purpose other than that for
14 which the fee or charge was imposed. (3) The amount of a fee or charge imposed upon any
15 parcel or person as an incident of property ownership shall not exceed the proportional cost of
16 the service attributable to the parcel. (4) No fee or charge may be imposed for a service unless
17 that service is actually used by, or immediately available to, the owner in question... (5) No fee
or charge may be imposed for general government services...”

18 23. Unless a charge qualifies as a “property-related fee” or falls within one of the
19 other six exceptions enumerated in Proposition 26, the charge is a “tax” that requires voter
20 approval.

21 24. Under Proposition 26, local government agencies bear the burden of proving
22 that a particular charge is not a “tax” subject to voter approval requirements.

23 25. In addition, Proposition 26 requires local government agencies to demonstrate
24 that the amount charged is no greater than necessary to cover the reasonable costs of the
25 governmental activity and that the costs are allocated in a fair and proportionate manner.

26 26. Respondents have violated, and continue to violate, each of the Proposition 218
27 requirements described above because the amounts collected as SWP Taxes are not related to
28 the actual cost of providing water to each class member’s particular property. The revenues

1 exceed required funds, are diverted to purposes other than paying CVWD's SWP obligations,
2 exceed the proportional cost of the service attributable to each class member's property, are
3 not actually used or available to each class member, and appear to be diverted to general
4 CVWD purposes.

5 27. In particular, revenues from the SWP Taxes are raised based on the assessed
6 value of the class members' respective properties without any regard to the actual cost of
7 providing water to the particular properties. Water costs have nothing to do with assessed
8 property values. For example, developed, urban land tends to have a higher assessed value
9 than agricultural land even though agricultural properties tend to use more water. As a result,
10 class members are forced to pay much more for water-related services even though it does not
11 cost more to provide water to them and they may not actually derive any benefit from all of the
12 services paid for by the revenue generated.

13 28. Respondents are also diverting the revenue from the SWP Taxes to purposes
14 (including, without limitation, the East Whitewater Replenishment Fund and the Groundwater
15 Replenishment Fund) which disproportionately benefit agricultural properties. Some properties
16 within CVWD's service area do not benefit from such programs at all. For instance, it appears
17 that CVWD has diverted millions of dollars to services that benefit only those properties
18 located in the East Whitewater area. Based on CVWD's publically available financial
19 information, Petitioner is informed and believes and based thereon alleges that approximately
20 \$19 million was unconstitutionally diverted to East Whitewater services in 2017 alone.
21 Petitioner is further informed and believes and based thereon alleges that improper diversions
22 from the time period 2014 through 2018 total over \$60 million.

23 29. In addition, since revenues from the SWP Taxes are raised based on assessed
24 property value, it is apparent that Respondents made no effort to perform a cost of service
25 study to determine the actual cost of providing water to the particular properties in its service
26 area to ensure that the property-related fees and charges it imposed comply with Proposition
27 218's requirements. The fact that no such study was conducted demonstrates that Respondents
28 will not be able to meet their burden of showing that the revenues assessed and collected are

1 proportional to the cost of water service attributable to each particular parcel in the CVWD
2 service area that is subject to the SWP Taxes.

3 30. Furthermore, Respondents did not comply with the notice and hearing
4 provisions for assessing property-related assessments, fees and/or charges that are set forth in
5 Proposition 218.

6 31. Because Proposition 218's requirements for property-related assessments, fees
7 and charges have not been met, and the SWP Taxes do not qualify for any of the other six (6)
8 exceptions enumerated in Proposition 26, the SWP Taxes are subject to taxation law and
9 policy including, without limitation, the voter approval requirements of Propositions 13, 26
10 and 218 and the one percent (1%) ad valorem tax limitation of Proposition 13.

11 32. In violation of Proposition 13, Respondents have charged and collected (and
12 continue to charge and collect) SWP Taxes in an amount in excess of one percent (1%) of the
13 class members' respective property values for purposes that were not approved by the Burns-
14 Porter Act prior to the passage of Proposition 13 and that have not otherwise been approved by
15 the voters.

16 33. Among other things, the amounts charged and collected as SWP Taxes greatly
17 exceed what is necessary to fund the CVWD's voter-approved SWP obligations and, upon
18 information and belief, have been diverted to impermissible purposes including, without
19 limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment
20 Fund, which disproportionately benefit agricultural property owners and water users.

21 34. Petitioner is further informed and believes and based thereon alleges that
22 CVWD's own legal consultants at Best Best & Krieger advised CVWD that SWP Taxes
23 exceeding Proposition 13's one percent (1%) limitation can only be used to pay SWP invoices.
24 However, Respondents intentionally disregarded this legal requirement and continued their
25 illegal and unconstitutional practice of imposing SWP Taxes in excess of the amounts actually
26 required to fund CVWD's voter-approved SWP obligations.

27 35. CVWD cannot levy ad valorem property taxes exceeding the one percent (1%)
28 cap established by Proposition 13 to pay indebtedness that was not actually approved by the

1 voters prior to enactment of Proposition 13. In particular, CVWD may not impose and collect
2 ad valorem taxes above the one percent (1%) limit by simply labeling the taxes as “SWP”
3 related. To the extent that CVWD and/or Riverside County have imposed SWP Taxes to pay
4 for SWP projects added after Proposition 13 was enacted (such as, for example, the anticipated
5 California WaterFix project), such taxes are void, invalid and unconstitutional.

6 36. Plaintiff is further informed and believes and based thereon alleges that
7 Respondents have failed to properly adjust the amount of SWP Taxes they impose in
8 accordance with actual SWP expenses. For example, as property taxes increase due to
9 increases in assessed property values, Respondents increase the SWP Taxes in accordance
10 with the property values even though CVWD’s SWP expenses have not similarly increased.
11 Thus, the SWP Taxes are imposed and increased without regard to actual SWP expenses and
12 the additional funds raised are improperly diverted to other, non-SWP purposes.

13 37. As alleged above, the Burns-Porter Act only permits Respondents to levy taxes
14 to pay for SWP expenses when funds cannot be raised by other means in a particular year.
15 Here, there is no indication that Respondents are unable to raise sufficient funds to pay
16 CVWD’s voter-approved SWP obligations by other means, such as volumetric water rates,
17 which would place less of a disproportionate burden on non-agricultural property owners like
18 the Petitioner and the Class. Petitioner is informed and believes and based thereon alleges that
19 Respondents have continued to impose and collect the SWP taxes without first conducting the
20 required annual analysis to ascertain whether property taxes are necessary because funds
21 cannot be raised by other means in that year. Thus, Respondents’ ongoing practice of levying
22 ad valorem property taxes for SWP-related expenses is contrary to the Burns-Porter Act,
23 exceeds the Respondents’ taxation authority, and violates the California Constitution, even
24 where the revenue collected is actually used to pay SWP invoices.

25 38. Petitioner is further informed and believes and based thereon alleges that, by
26 approximately 2012, Respondents had collected millions of dollars from the Class through the
27 imposition and collection of SWP Taxes, and CVWD placed certain of these monies in a
28 segregated, restricted SWP Reserve Fund (the “SWP Reserves”). In accordance with the law

1 discussed above, those ad valorem tax funds could only be used to repay the SWP debt which
2 was approved by the voters prior to the passage of Proposition 13 (including fixed and variable
3 SWP expenses). Moreover, CVWD's own internal documents acknowledge that the SWP
4 Reserves were in a "restricted" fund that could only be used to pay SWP-related invoices.
5 Petitioner is informed and believes and based thereon alleges that, in violation of the
6 applicable laws and restrictions, CVWD transferred millions of dollars of SWP Reserves to
7 other funds and for improper purposes including, without limitation, the Groundwater
8 Replenishment Fund.

9 39. The fact that Respondents have continued to impose SWP taxes in excess of
10 actual SWP invoices further demonstrates that the SWP Reserves were misdirected and not
11 spent for lawful purposes. CVWD has failed to adequately account for its expenditure of the
12 SWP Reserves. However, upon information and belief, CVWD still has millions of dollars of
13 SWP Reserves (including interest accrued thereon) which must either be returned to the Class
14 or applied toward voter-approved SWP obligations in a manner that reduces the SWP Taxes
15 imposed on the Class in the future.

16 40. In summary, the SWP Taxes are unlawful and improper because, among other
17 things, the SWP Taxes: (a) do not comply with the requirements for ad valorem property taxes
18 under Proposition 13 because they exceed one percent (1%) of property values and are not
19 necessary to pay SWP-related debt that was approved prior to the enactment of Proposition 13;
20 (b) do not comply with the requirements for local "taxes" because they were not approved by
21 the voters or otherwise subject to an exemption expressly set forth in Proposition 26; and (c)
22 do not comply with the requirements for property related assessments, fees or charges under
23 Proposition 218 because, among other reasons, they are not proportional to the special benefit
24 or service actually received by the class members' particular properties. In addition,
25 Respondents' use and application of the SWP Reserves is unlawful and improper because,
26 among other things, the SWP Reserves have been diverted to purposes other than paying
27 voter-approved SWP obligations.

28 41. Respondents' violations and wrongful conduct, as alleged herein, are

1 substantial and continuing. Accordingly, the Petitioner and the Class are entitled to legal and
2 equitable remedies including, without limitation, restitution or refunds of any and all moneys
3 that have been unlawfully and/or improperly collected as SWP Taxes and/or credits toward
4 any future payment obligations of the Petitioner and the Class, a declaration of their rights
5 with respect to the SWP Taxes and the SWP Reserves, and a writ of mandate and/or injunction
6 requiring Respondents to cease and desist in their unlawful imposition, collection, enforcement
7 and use of the SWP Taxes and SWP Reserves.

8 **CLASS DEFINITIONS**

9 42. Petitioner brings this action on behalf of himself and on behalf of all others
10 similarly situated, as a class action pursuant to *Code of Civil Procedure* §382. The Class
11 consists of all current and former non-agricultural property owners, tax payers and water
12 customers within the Coachella Valley Water District who paid the SWP Taxes.

13 43. Petitioner reserves the right to modify the Class definition after further
14 discovery.

15 **CLASS ACTION ALLEGATIONS**

16 44. Petitioner alleges that all relevant times he:

- 17 a. Was and is a customer of CVWD.
- 18 b. Did and does own real property in the County of Riverside.
- 19 c. Was and is subject to the SWP Taxes.
- 20 d. Paid and continues to pay the SWP Taxes.
- 21 e. Paid the SWP Taxes which comprise the SWP Reserves.

22 45. This Class Action meets the statutory prerequisites for maintenance of a Class
23 Action as set forth in *Code of Civil Procedure* §382, as follows:

- 24 a. **Numerosity**: Petitioner is informed and believes, and based thereon
25 alleges, that the number of class members is great, and that the Class
26 includes many thousands of non-agricultural property owners and water
27 customers. The class is, therefore, so numerous that joinder of all
28 members in one action is impracticable.

1 b. **Ascertainability**: Despite the size of the proposed class, the class
2 members are readily ascertainable through an examination of
3 Respondents' records. Likewise, the dollar amount owed to each class
4 member is readily ascertainable by an examination of Respondents'
5 records.

6 c. **Common Questions Predominate**: Respondents have acted with
7 respect to the Petitioner and the members of the Class in a manner
8 generally applicable to each of them. The questions of law and fact
9 common to the Class predominate over the questions that may affect
10 individual class members including, without limitation, the following:

- 11 i. Whether the SWP Taxes violate Proposition 218;
- 12 ii. Whether the SWP Taxes violate Proposition 13;
- 13 iii. Whether the SWP Taxes violate Proposition 26;
- 14 iv. Whether the SWP Taxes violate CVWD's SWP Contracts;
- 15 v. Whether the SWP Taxes are deemed to be "taxes" subject to
16 voter approval requirements and, if so, whether such
17 requirements have been violated;
- 18 vi. Whether revenue from the SWP Taxes (including, without
19 limitation, the SWP Reserves) have been used for improper or
20 unlawful purposes;
- 21 vii. Whether Respondents are required to raise funds to pay for SWP
22 obligations through means other than ad valorem property taxes;
23 and
- 24 viii. Whether Respondents are required to perform an annual analysis
25 to determine whether sufficient funds may be raised to pay for
26 SWP obligations through means other than property taxes.

27 d. **Community of Interest**: There is a well-defined community of interest
28 in the questions of law and fact involved, which affect all class

members.

e. **Typicality**: Petitioner's claims are typical of the class of the proposed class members, which arise from the same general operative facts, namely, that they were and/or are all subject to the SWP Taxes.

f. **Superiority**: A class action is a superior method for the fair and efficient adjudication of this controversy. The persons within the class are so numerous that joinder of them is impracticable. The disposition of all claims of the members of the class in a class action, rather than in individual actions, benefits the parties and the Court. The interest of the class members in controlling the prosecution of separate claims against Respondents is small when compared with the efficiency of a class action.

g. **Adequacy**: Petitioner is an adequate representative of the Class because Petitioner's claims are typical of those of the Class and Petitioner has the same interest in the litigation of this case as the proposed class members. Petitioner is committed to vigorous prosecution of this case, and has retained competent and experienced counsel who possess the requisite skill and experience (in particular, experience litigating issues relating to water charges) to adequately represent Petitioner and the Class. Petitioner is not subject to any individual defenses unique from those conceivably applicable to the Class as a whole.

h. **Manageability**: Although the number of class members is great and is believed to include many thousands of water customers and tax payers, the matter is manageable as a class action, liability is susceptible to common proof, and the data required to establish liability and damages are readily available in Respondents' records.

46. Without class certification and determination of declaratory, injunctive, legal

1 and other questions within the class format, prosecution of separate actions by individual
2 members of the Class will create the risk of:

- 3 a. Inconsistent or varying adjudications with respect to individual
4 members of the Class, which would establish incompatible standards of
5 conduct for the parties opposing the class;
- 6 b. Adjudication with respect to individual members of the Class, which
7 would, as a practical matter, be dispositive of the interests of the other
8 members not party to the adjudication, or which would substantially
9 impair their ability to protect their interests.

10 47. Respondents have acted or have refused to act on the grounds generally
11 applicable to the Class, thereby making final relief appropriate with respect to the Class.

12 48. The proposed class satisfies the certification criteria applicable to this action,
13 including *Code of Civil Procedure* §382 and the case law construing and applying that statute.

14 **GOVERNMENT CLAIMS ACT COMPLIANCE**

15 49. On or about May 30, 2018, Petitioner, on behalf of himself and the proposed
16 Class, presented a claim to CVWD pursuant to the Government Claims Act, *Government Code*
17 §900 *et seq.* A true and correct copy of said claim is attached hereto as **Exhibit 1** and is
18 incorporated herein by this reference.

19 50. CVWD rejected a part of the claim on or about June 27, 2018. A true and
20 correct copy of CVWD's notice of rejection is attached hereto as **Exhibit 2** and is incorporated
21 herein by this reference. CVWD failed to act on any other parts of the claim within 45 days
22 and, as such, those parts of the claim are deemed rejected by operation of law.

23 51. On or about August 30, 2018, Petitioner, on behalf of himself and the proposed
24 class, presented an amended and restated claim to CVWD pursuant to the Government Claims
25 Act, *Government Code* §900 *et seq.* A true and correct copy of said claim is attached hereto as
26 **Exhibit 3** and is incorporated herein by this reference.

27 52. CVWD rejected the amended and restated claim, in full, on or about September
28 11, 2018. A true and correct copy of CVWD's notice of rejection is attached hereto as **Exhibit**

1 4 and is incorporated herein by this reference.

2 53. On or about May 30, 2018, Petitioner, on behalf of himself and the proposed
3 class, presented a claim to the County pursuant to the Government Claims Act, *Government*
4 *Code* §900 *et seq.* A true and correct copy of said claim is attached hereto as Exhibit 5 and is
5 incorporated herein by this reference.

6 54. The claim presented to the County was rejected by operation of law on July 30,
7 2018. A true and correct copy of the County's notice of rejection is attached hereto as Exhibit
8 6 and is incorporated herein by this reference.

9 55. On or about August 30, 2018, Petitioner, on behalf of himself and the proposed
10 class, presented an amended and restated claim to the County pursuant to the Government
11 Claims Act, *Government Code* §900 *et seq.* A true and correct copy of said claim is attached
12 hereto as Exhibit 7 and is incorporated herein by this reference.

13 56. The County rejected the amended and restated claim on or about October 18,
14 2018. A true and correct copy of the County's notice of rejection is attached hereto as Exhibit
15 8 and is incorporated herein by this reference.

16 FIRST CAUSE OF ACTION

17 (Writ of Mandate – Against All Defendants)

18 57. Petitioner incorporates paragraphs 1 through 56 of this Complaint and Petition
19 as though fully set forth herein.

20 58. As alleged herein, Respondents have refused, and continue to refuse, to comply
21 with all applicable law and policy including, without limitation, Propositions 13, 26 and/or 218
22 as codified in article XIII of the California Constitution, the Burns-Porter Act and/or CVWD's
23 SWP Contracts by, among other things, enacting, imposing, collecting and/or enforcing the
24 SWP Taxes and/or by improperly using and/or diverting revenue generated from the SWP
25 Taxes. Respondents' enactment, imposition, collection and enforcement of the SWP Taxes
26 and Respondents' improper use and/or diversion of revenue generated from the SWP Taxes, as
27 well as any and all acts and proceedings leading up to the same (including, without limitation,
28 the enactment and enforcement of CVWD's Resolution No. 2013-36), are unlawful, invalid,

1 void and/or unconstitutional.

2 59. Respondents have a clear and present duty to comply with all applicable law
3 and policy including, without limitation, the constitutional and statutory mandates of
4 Propositions 13, 26 and 218, the Burns-Porter Act and CVWD's SWP Contracts.

5 60. The Petitioner and the Class have a clear, present and beneficial right to the
6 performance of Respondents' duty to comply with all applicable law and policy including,
7 without limitation, the constitutional and statutory mandates of Propositions 13, 26 and 218,
8 the Burns-Porter Act and CVWD's SWP Contracts.

9 61. As a result of Respondents' enactment, imposition, collection and enforcement
10 of the SWP Taxes and Respondents' improper use and/or diversion of revenue generated from
11 the SWP Taxes, the Petitioner and the Class have been forced to pay unlawful and improper
12 charges to Respondents, have been deprived of benefits of the use of revenue generated from
13 the SWP Taxes, and have been forced to subsidize the cost of water used by agricultural
14 property owners and water customers. Accordingly, the Petitioner and the Class have suffered
15 significant harm as a result of Respondents' actions and they will continue to suffer such harm
16 for as long as Respondents continue to impose, collect, enforce, use and/or divert the SWP
17 Taxes in violation of applicable law and policy.

18 62. The Petitioner and the Class do not have an adequate remedy at law.

19 63. Accordingly, the Petitioner and the Class are entitled to a writ of mandate
20 pursuant to *Code of Civil Procedure* §1085 directing Respondents, among other things, to: (a)
21 cease and desist in the collection and enforcement of the SWP Taxes; (b) vacate any and all
22 decisions, acts and/or resolutions imposing, authorizing, extending or increasing the SWP
23 Taxes (including, without limitation, the enactment and enforcement of CVWD's Resolution
24 No. 2013-36); (c) restore to the Petitioner and the Class any and all moneys that have been
25 unlawfully and/or improperly collected as SWP Taxes; and (d) apply the SWP Reserves to pay
26 SWP contractual obligations consistent with voter-approved purposes.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **(Violation of Cal. Const. art. XIII – Against All Defendants)**

3 64. Petitioner incorporates paragraphs 1 through 63 of this Complaint and Petition
4 as though fully set forth herein.

5 65. As alleged herein, Respondents have violated, and continue to violate, law and
6 policy applicable to the SWP Taxes and SWP Reserves including, without limitation,
7 Propositions 13, 26 and/or 218 (codified at article XIII of the California Constitution).

8 66. As a result of Respondents' violations and wrongful conduct, the Petitioner and
9 the Class have suffered significant damages in an amount to be proven trial that is estimated to
10 be many millions of dollars.

11 67. Petitioner and the Class have been damaged by Respondents' violations of
12 Proposition 13 because, among other things, they have been forced to pay ad valorem property
13 taxes above one percent (1%) of the assessed value of their respective properties for purposes
14 other than paying CVWD's voter-approved SWP obligations and for purposes that
15 disproportionally benefit agricultural property owners and water users. Moreover, Petitioner
16 and the Class have been forced to pay these valorem taxes even though SWP expenses could
17 be funded through other, more equitable means such as volumetric water rates and/or
18 application of SWP Reserves.

19 68. Petitioner and the Class have been damaged by violations of Proposition 218
20 because, among other things, they have been forced to pay property-related assessments, taxes,
21 fees or charges under the guise of purported SWP-related ad valorem taxes, which were not
22 approved by the voters, do not satisfy Proposition 218's requirements for property-related
23 assessments, fees and charges, and disproportionally benefit agricultural property owners and
24 water users.

25 69. Respondents' violations and wrongful conduct are continuing and will cause
26 great and irreparable injury to the Petitioner and the Class if Respondents are not enjoined and
27 restrained by order of the Court.

28 70. Accordingly, the Petitioner and the Class request that the Court issue a

1 temporary restraining order, preliminary injunction and/or permanent injunction, among other
2 things, prohibiting Respondents from: (a) enforcing, collecting, using or diverting SWP Taxes
3 in a manner that is inconsistent with applicable law and policy including, without limitation,
4 Propositions 13, 26 and/or 218 (codified at article XIII of the California Constitution) and (b)
5 using or diverting SWP Reserves in a manner that is inconsistent with applicable law and
6 policy including, without limitation, Propositions 13, 26 and/or 218 (codified at article XIII of
7 the California Constitution).

8 71. In addition, the Petitioner and the Class request the Court issue a temporary
9 restraining order, preliminary injunction and/or permanent injunction requiring Respondents to
10 apply the SWP Reserves to pay SWP contractual obligations consistent with voter-approved
11 purposes in a manner that reduces the SWP Taxes imposed on the Class in the future.

12 **THIRD CAUSE OF ACTION**

13 **(Declaratory Relief – Against All Defendants)**

14 72. Petitioner incorporates paragraphs 1 through 71 of this Complaint and Petition
15 as though fully set forth herein.

16 73. Pursuant to *Code of Civil Procedure* §1060 *et seq.*, the Petitioner and the Class
17 seek a declaration of the parties' respective rights and duties regarding the SWP Taxes and the
18 SWP Reserves.

19 74. The Petitioner and the Class contend that the SWP Taxes are unlawful and
20 improper because, among other things, the SWP Taxes: (a) do not comply with the
21 requirements for ad valorem property taxes under Proposition 13 because they exceed one
22 percent (1%) of property values and are not necessary to pay SWP-related debt that was
23 approved prior to the enactment of Proposition 13; (b) do not comply with the requirements for
24 local "taxes" because they were not approved by the voters or otherwise subject to an
25 exemption expressly set forth in Proposition 26; and (c) do not comply with the requirements
26 for property related assessments, fees or charges under Proposition 218 because, among other
27 reasons, they are not proportional to the special benefit or service actually received by
28 Claimants' particular properties. The Petitioner and the Class further contend that

Respondents' use and diversion of the SWP Reserves is, and has been, unlawful and improper.

75. Respondents deny the contentions of the Petitioner and the Class. Therefore, an actual controversy has arisen and now exists between the Petitioner and the Class, on the one hand, and the Respondents, on the other hand.

76. Accordingly, the Petitioner and the Class hereby request a judicial declaration of their rights with respect to the controversy described herein. Such a declaration is necessary and appropriate at this time under the circumstances so that the Petitioner and the Class can ascertain their ongoing rights and duties with respect to the SWP Taxes and the SWP Reserves.

WHEREFORE, the Petitioner and the Class request entry of a judgment in their favor and against Respondents, and each of them, and prays for the following relief:

On the First Cause of Action:

1. A writ of mandate pursuant to *Code of Civil Procedure* §1085 directing Respondents, among other things, to: (a) cease and desist in the collection and enforcement of the SWP Taxes; (b) vacate any and all decisions, acts and/or resolutions imposing, authorizing, extending or increasing the SWP Taxes (including, without limitation, CVWD's Resolution No. 2013-36); (c) restore to the Petitioner and the Class any and all moneys that have been unlawfully and/or improperly collected as SWP Taxes; and (d) apply the SWP Reserves to pay SWP contractual obligations consistent with voter-approved purposes.

On the Second Cause of Action:

2. Damages according to proof at trial and/or restitution or refunds of any and all moneys that have been unlawfully and/or improperly collected by Respondents as SWP Taxes.

3. A temporary restraining order, preliminary injunction and/or permanent injunction, among other things, prohibiting Respondents from: (i) enforcing, collecting, using or diverting SWP Taxes in a manner that is in violation of applicable law and/or against policy including, without limitation, Propositions 13, 26 and/or 218 (codified at article XIII of the California Constitution); and (ii) using or diverting SWP Reserves in a manner that is in violation of applicable law and/or against policy including, without limitation, Propositions 13,

26 and/or 218 (codified at article XIII of the California Constitution).

4. A temporary restraining order, preliminary injunction and/or permanent injunction, among other things, requiring Respondents to apply the SWP Reserves to pay SWP contractual obligations consistent with voter-approved purposes in a manner that reduces the SWP Taxes imposed on the Class in the future, to the extent required by applicable law.

On the Third Cause of Action:

5. A judicial determination of the parties' respective rights and duties regarding the SWP Taxes and the SWP Reserves that is consistent with the allegations set forth in this Petition and Complaint and in accordance with applicable law.

On All Causes of Action:

6. Interest at the legal rate from the date of each loss or claim for refunds or restitution.

7. Costs incurred herein;

8. Attorneys' fees as permitted by law and/or equity; and

9. Such other and further relief as the Court may deem just and proper.

Dated: November 29, 2018

COSTELL & CORNELIUS LAW CORPORATION

By. _____

Jeffrey Lee Costell

Sara M. McDuffie

Attorneys for *Petitioner/Plaintiff* Randall C. Roberts,
Individually and as Trustee of the Roberts Family Trust
Dated November 17, 2010, on Behalf of Himself and All
Others Similarly Situated

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Randall C. Adams

**Randall C. Roberts, Individually and as Trustee
of the Roberts Family Trust Dated November 17, 2010**

Exhibit 1

CLAIM FORM

NAME OF DISTRICT: Coachella Valley Water District

1. Claimant's name, address and phone number.

Randall C. Roberts, Individually and as Trustee of the Roberts Family Trust dated November 17, 2010, on behalf of himself and all others similarly situated (including, without limitation, all current and former non-agricultural property owners, taxpayers and water customers within the Coachella Valley Water District ("CVWD") who paid fees, charges, taxes, assessments and/or other exactions characterized as "ad valorem property taxes" that were unconstitutional or otherwise illegal and that were imposed, extended, increased and/or collected by CVWD and/or Riverside County ("Riverside")) (hereinafter referred to as "Claimants").

49790 Desert Vista Dr.

Palm Desert, CA 92260

(520) 834-3932

Claimant's mailing address.

c/o Costell & Cornelius Law Corp.

Jeffrey Lee Costell, Esq.

Sara M. McDuffie, Esq.

1299 Ocean Ave., Ste. 450

Santa Monica, CA 90401

(310) 458-5959

2. List name, address and phone number of any witnesses.

CVWD's current and former board members, employees and staff;

CVWD's current and former water consultants;

CVWD's current and former accountants and auditors; and

CVWD's current and former legal consultants.

Coachella Valley Water District

51501 Tyler Street

Coachella, CA 92236

Riverside County Tax Assessor

4080 Lemon St., 1st Floor

Riverside, CA 92501

Claimants (including, without limitation, Randall C. Roberts)
c/o Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

Claimants' investigation is ongoing and it is anticipated that there will be additional witnesses.

3. List the date, time, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

July 1, 2013 through the present, and continuing into the future, each time that Claimants have paid, or will pay, fees, charges, taxes, assessments and/or other exactions characterized as "ad valorem property taxes" that were unconstitutional or otherwise illegal and that were imposed, extended, increased and/or collected by CVWD and/or Riverside.

Tell what happened (give complete information):

CVWD and/or Riverside County have continued to impose, extend, increase and/or collect certain purported "ad valorem property taxes" from water customers, property owners and/or taxpayers in the CVWD service area in violation of Proposition 13, Proposition 218 and/or other applicable laws as set forth below. Such unlawful assessments, taxes, fees or charges disproportionately benefit agricultural property owners and water users (including members of the CVWD's Board of Directors) to the damage and detriment of Claimants. Thus, members of the CVWD's Board of Directors who are directly involved in the imposition, extension, increase and/or collection of the purported SWP-related ad valorem taxes (including, without limitation, Directors Powell, Nelson and Bianco) have received, and will continue to receive, significant personal financial benefits as a result of their unconstitutional acts and failure to recuse themselves pursuant to applicable conflict of interest rules.

The violations described herein are continuing and include, without limitation, the imposition, extension, increase and/or collection of assessments, taxes, fees or charges pursuant to ordinances, resolutions or other acts relating to the California WaterFix project, in addition to the ordinances, resolutions or other acts that are or have been operative from and after July 1, 2013.

Proposition 13 Violations

In 1960, the voters in California approved the Burns-Porter Act to provide for the financing and construction of the California State Water Project ("SWP"). The SWP includes a water

development and conveyance system that collects, stores and transfers water to various water agencies throughout the State of California, including CVWD.

Proposition 13 was approved by California voters in 1978 in order to limit ad valorem property taxes (i.e., taxes on property owners based on the value of their respective properties). Prior to the passage of Proposition 13, each local government could set or levy its property tax rate annually. Under Proposition 13, this was changed so that a property's overall ad valorem tax rate for all local governments is limited to 1% of the property's taxable value.

Section 1(b) of Proposition 13 further provides that the 1% tax limitation "shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to [July 1, 1978]." Thus, Proposition 13 restricted ad valorem property taxes while still honoring already-approved debts. Because the Burns-Porter Act was enacted before Proposition 13, CVWD and/or Riverside County have charged, and continue to charge, ad valorem property taxes in excess of 1% under the justification that is used to pay pre-approved "indebtedness" incurred in connection with financing the SWP. *See also Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 910 (concluding that "the voters necessarily approved the use of local property taxes whenever the boards of directors of the agencies determined such use to be necessary to fund their water contract obligations").

However, in violation of Proposition 13, CVWD and/or Riverside County have imposed, extended, increased and/or collected ad valorem property taxes from CVWD's water customers in an amount in excess of 1% of the customers' property value for purposes other than paying the indebtedness incurred to fund the SWP. The ad valorem taxes do not comply with the 1% limitation mandated by Proposition 13, and the taxes also do not fall within the Section 1(b) exception for assessments to pay pre-approved debt. All such taxes are, therefore, unconstitutional.

The amounts collected by CVWD and/or Riverside County through purported SWP-related ad valorem taxes greatly exceed what is necessary to fund the district's SWP obligations. For example, in 2017 CVWD collected approximately \$59 million from SWP-related ad valorem taxes even though CVWD's SWP expenses were only \$45 million that year. Thus, in 2017 alone CVWD collected approximately \$14 million more than it was permitted to under Proposition 13. Between 2012 and 2017, it appears that CVWD improperly collected approximately \$66 million more than the funds it needed to pay its SWP obligations.

In addition, CVWD's financial information shows that revenues from the purported SWP-related ad valorem taxes have been diverted to other purposes including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund, which disproportionately benefit agricultural property owners and water users. Many Claimants who pay the SWP-related ad valorem taxes do not benefit from such use of funds at all.

CVWD's own legal consultants at Best Best & Krieger advised CVWD that the SWP-related ad valorem taxes exceeding 1% can only be used to pay SWP invoices. However, CVWD intentionally disregarded this legal requirement and continued its illegal and unconstitutional practice of imposing, extending, increasing and/or collecting purported SWP-related ad valorem taxes in excess of the amounts actually required to fund the district's SWP obligations.

It further appears that CVWD has failed to properly adjust the amount of purported SWP-related ad valorem taxes it imposes and collects in accordance with SWP expenses. For example, as property taxes increase due to increases in assessed property values, CVWD imposes, collects and uses the increased taxes even though the SWP expenses have not similarly increased. Thus, the taxes are imposed and collected without regard to actual SWP expenses and the additional funds raised are improperly diverted to other, non-SWP purposes.

Moreover, as noted in a California Attorney General Opinion, the Burns Porter Act expresses a preference for funding SWP-related expenses through water charges rather than taxation "in that it provides that the state system would be supported primarily by the sale of water and power...The Legislature and the voters clearly contemplated an essentially closed, self-supporting system...The ballot argument in favor of the Burns-Porter Act echoed this preference: 'The program will not be a burden on the taxpayer; no new state taxes are involved; the bonds are repaid from project revenues, through the sale of water and power. In other words, it will pay for itself.'" (61 Ops.Cal.Atty.Gen. 373 (No. CV 78-90, Aug. 18, 1978) (quoting Voters Pamphlet, Nov. 8, 1960, p.3).)

Although the Burns-Porter Act contemplates that local taxes may be required to pay SWP obligations, the authority to levy such taxation "is expressly limited to situations where it is necessary...Similarly, the contract with the Metropolitan Water District authorizes taxation only where revenue from the sale of water proves insufficient: 'If any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.'" (*Id.* (quoting Metropolitan Water District of Southern California contract, article 34(a).)

Thus, CVWD's ongoing practice of levying ad valorem property taxes for SWP-related expenses is contrary to the Burns-Porter Act, exceeds the district's taxation authority and violates the California Constitution, even where the revenue collected is actually used to pay SWP invoices. There is no indication that CVWD is unable to raise sufficient funds for SWP-related indebtedness by other means, such as volumetric water rates, which would place less of a disproportionate burden on non-agricultural property owners like Claimants. Indeed, other water districts fund the SWP through water rates and other means without relying on ad valorem property taxes.

Moreover, CVWD cannot levy ad valorem property taxes exceeding the 1% cap established by Proposition 13 to pay indebtedness that was not actually approved by the voters prior to enactment of Proposition 13. For obligations not approved prior to Proposition 13, ad valorem property taxes must be capped at 1%. See *Howard Jarvis Taxpayers Ass'n v. County of Orange*

therefore, they must be specific, real, and existing. If they are not, the tax is barred." *Id.* Indeed, the exception to Proposition 13's 1% tax limit "is a safety net; it is not an open checkbook." *Id.* at 1387. CVWD may not impose and collect ad valorem taxes above the 1% limit by simply labeling the taxes as "SWP" related. To the extent that CVWD and/or Riverside County have imposed, extended and/or increased ad valorem property taxes to pay for SWP projects added after Proposition 13 was enacted (such as, for example, the California WaterFix project), such taxes are void, invalid and unconstitutional.

The true extent of the unconstitutional imposition, collection and diversion of funds is not fully known at this time. Among other things, publically available information about the collection and use of funds does not fully account for CVWD's application of the amounts collected as

“to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.” (Prop. 218, §5).

In particular, Proposition 218 focuses on exactions (whether they are called assessments, taxes, fees or charges) that are directly associated with property ownership. Under Proposition 218, the only levies which can be imposed on real property are the following:

1. The ad valorem property tax imposed pursuant to Article XIII and Article XIII A of this Constitution.
2. Any special tax receiving a two-thirds vote pursuant to Article XIII A, Section 4.
3. Assessments as provided by this article.
4. Fees or charges for property related services as provided by this article.

Under Proposition 218, “assessments” are levies upon real property by an agency for a special benefit conferred upon the real property. (Cal. Const. art. XIII D, §2, subd. (b)). Proposition 218 provides that “[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel.” (*Id.*) As the courts interpreting this Proposition have explained, “The general public should not be required to pay for special benefits for the few and the few specially benefitted should not be subsidized by the general public.” *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545.

In this case, CVWD and/or Riverside County have violated these requirements because property owners are being forced to pay exactions which exceed the reasonable cost of the proportional special benefit conferred on their particular parcel, if any special benefit is conferred at all. In particular, it appears that agricultural property owners are receiving special benefits which are being subsidized by Claimants. Furthermore, it appears that the assessments are not supported by a detailed engineer’s report as required by Proposition 218, and that CVWD has made no effort to determine the proportional special benefit derived by the various parcels within its service area.

Proposition 218 also sets forth the following requirements for property-related fees and charges: “A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service. (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed. (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable

to the parcel. (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner in question... (5) No fee or charge may be imposed for general government services...”

It appears that CVWD and/or Riverside County have violated each of these Proposition 218 requirements because the amounts unconstitutionally collected as purported SWP-related ad valorem property taxes are not related to the actual cost of providing water to each of the Claimants’ particular properties. The revenues exceed funds that are required to provide water to Claimants, are diverted to purposes other than SWP-related expenses, exceed the proportional cost of the water service attributable to each property, are not actually used or available to each of the Claimants, and appear to be diverted to general CVWD purposes.

In particular, revenues are raised based on the assessed value of the Claimants’ respective properties without any regard to the actual cost of providing water to the particular properties. Water costs have nothing to do with assessed property values. For example, developed, urban land tends to have a higher assessed value than agricultural land even though agricultural properties tend to use more water. As a result, Claimants are forced to pay much more for water-related services even though it does not cost more to provide water to them and they may not actually derive any benefit from all of the services paid for by the revenue generated.

It appears that CVWD is diverting the revenue to purposes (including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund) which disproportionately benefit agricultural properties. Some properties within CVWD’s service area do not benefit from such programs at all. For instance, it appears that CVWD has diverted millions of dollars to services that benefit only those properties located in the East Whitewater area. Based on CVWD’s publically available financial information, it appears that approximately \$19 million was unconstitutionally diverted to East Whitewater services in 2017 alone. Such improper diversions from the time period 2014 through 2018 are estimated to be over \$60 million.

In addition, since revenues are raised based on assessed property value, it appears that CVWD made no effort to perform a cost of service study in compliance with Proposition 218. In other words, CVWD did not perform a study to determine the actual cost of providing water to the particular properties in its service area to ensure that the property-related fees and charges it imposed comply with Proposition 218’s requirements. The fact that no such study was conducted demonstrates that CVWD will not be able to meet its burden of showing that the revenues assessed and collected are proportional to the cost of water service attributable to each particular parcel in its service area that is subject to the purported SWP-related ad valorem property taxes.

Furthermore, CVWD did not comply with the notice and hearing provisions for assessing property-related assessments, fees and/or charges that are set forth in Proposition 218.

Because Proposition 218's requirements for property-related assessments, fees and charges have not been met, the exactions imposed, extended, increased and/or collected by CVWD and/or Riverside County under the guise of SWP-related ad valorem property taxes may constitute general or special "taxes" requiring voter approval. General taxes require a majority vote of registered voters, and special taxes require a two-thirds voter approval. (Cal. Const. art. XIII C, §2).

In 2010, Proposition 26 was enacted to provide a more specific definition of state and local "taxes." Pursuant to Proposition 26, all revenue measures imposed by local governments are "taxes" unless the measure falls within one of the following seven enumerated exemptions:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
6. A charge imposed as a condition of property development.
7. Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

(Cal. Const. art. XIII C, §1, subd. (e)).

The exactions that are the subject of this Claim do not fall within any of the seven enumerated exemptions. Accordingly, the exactions may be deemed local "taxes" subject to voter approval requirements. Because CVWD and/or Riverside County have imposed, extended, increased

and/or collected such “taxes” without any prior approval from the voters (and continue to do so), the taxes are unconstitutional, void and invalid under Proposition 218.

Summary

The purported SWP-related ad valorem property taxes which are the subject of this Claim are unlawful, void and invalid pursuant to Proposition 13, Proposition 218 and/or other applicable law whether they are characterized as taxes, assessments, fees or charges.

Among other things, the exactions (1) do not comply with the requirements for ad valorem property taxes under Proposition 13 because they exceed 1% of property values and are not necessary to pay SWP-related debt that was approved prior to the enactment of Proposition 13, (2) do not comply with the requirements for local “taxes” because they were not approved by the voters or otherwise subject to an exemption expressly set forth in Proposition 26, and (3) do not comply with the requirements for property related assessments, fees or charges under Proposition 218 because, among other reasons, they are not proportional to the special benefit or service actually received by Claimants’ particular properties.

Accordingly, the purported SWP-related exactions are not permitted and violate the California Constitution and/or other applicable law.

4. Give a general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

Claimants have been damaged by violations of Proposition 13 because, among other things, they have been forced to pay ad valorem property taxes above 1% of the assessed value of their respective properties for purposes other than paying CVWD’s pre-approved SWP obligations and for purposes that disproportionately benefit agricultural property owners and water users. Moreover, Claimants have been forced to pay these valorem taxes even though SWP expenses could be funded through other, more equitable means such as volumetric water rates.

Claimants have been damaged by violations of Proposition 218 because, among other things, they have been forced to pay property-related assessments, taxes, fees or charges under the guise of purported SWP-related ad valorem taxes, which were not approved by the voters, do not satisfy Proposition 218’s requirements for property-related assessments, fees and charges, and disproportionately benefit agricultural property owners and water users.

Accordingly, any and all ordinances, resolutions or other acts which impose, extend, increase and/or enforce such unconstitutional exactions should be declared void, invalid and unenforceable, and CVWD and Riverside County should be enjoined from their continued collection and enforcement of such unconstitutional exactions. In addition, Claimants are entitled to restitution, refunds and/or reimbursement of any and all amounts CVWD and/or

Riverside County collected from Claimants in violation of the Constitution or other applicable laws.

This claim is based on preliminary investigation, and there may be other grounds on which the subject "ad valorem property tax" is subject to legal challenge. Nothing contained or omitted herein or in any other claim or communication shall constitute or is intended to or shall operate as an admission or as an election, waiver or relinquishment of or limitation on any right, remedy or defense, at law or in equity, all of which are reserved.

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5. **Give the name or names of the public employee or employees causing the injury, damage, or loss, if known.**

CVWD including, without limitation, its board members, officers and/or other person(s) in control of the matters alleged herein.

Riverside County including, without limitation, the Riverside County Tax Assessor, and the County's agencies, supervisors and/or other person(s) in control of the matters alleged herein.

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6. **The amount claimed if it totals less than \$10,000 as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds \$10,000, no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.**

Damages exceed \$10,000. The claim would be filed as an unlimited civil class action case and/or other unlimited civil case.

Date: May 30, 2018

Signature:



Costell & Cornelius Law Corporation

Jeffrey Lee Costell, Esq.

Sara M. McDuffie, Esq.

Attorneys for Claimant Randall C. Roberts

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Exhibit 2



COACHELLA VALLEY WATER DISTRICT

Established in 1918 as a public agency

GENERAL MANAGER
Jim Barrett

ASSISTANT GENERAL MANAGER
Robert Cheng

June 27, 2018

Randall C. Roberts
c/o Alexandre I. Cornelius, Esq.
Costell & Cornelius Law Corp.
1299 Ocean Avenue, Suite 450
Santa Monica, CA 90401

File: 0091.2
Incident #: 2180521.0

Re: May 30, 2018 Claim

REJECTION OF CLAIM FOR DAMAGES

Dear Mr. Roberts:

YOU ARE HEREBY NOTIFIED THAT:

The portion of your claim filed May 30, 2018, which was not previously returned without action via letter on June 19, 2018, was heard by the Coachella Valley Water District Board of Directors on June 26, 2018 and is hereby denied.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in this Claim. (See, Gov. Code, § 945.6.) The time for filing in federal court may be less than six (6) months.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Should you file a lawsuit in this matter, which is determined to be in bad faith and without reasonable cause, please be advised that CVWD can, and will, attempt to recover all of its defense costs as allowed by California Code of Civil Procedure Sections 128.5 and 1038.

Sincerely,

Chris Chaffin
Claims Manager
cchaffin@cvwd.org



Exhibit 3

AMENDED AND RESTATED CLAIM

NAME OF DISTRICT: Coachella Valley Water District

1. Claimant's name, address and phone number.

Randall C. Roberts, Individually and as Trustee of the Roberts Family Trust dated November 17, 2010, on behalf of himself and all others similarly situated (including, without limitation, all current and former non-agricultural property owners, taxpayers and water customers within the Coachella Valley Water District ("CVWD") who paid fees, charges, taxes, assessments and/or other exactions characterized as "ad valorem property taxes" for the California State Water Project ("SWP Taxes") that were imposed, extended, increased and/or collected ("Imposed") by CVWD and/or Riverside County ("Riverside")) (hereinafter referred to as "Claimants").

49790 Desert Vista Dr.
Palm Desert, CA 92260
(520) 834-3932

Claimant's mailing address.

c/o Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

2. List name, address and phone number of any witnesses.

CVWD's current and former board members, employees and staff;
CVWD's current and former water consultants;
CVWD's current and former accountants and auditors; and
CVWD's current and former legal consultants.
Coachella Valley Water District
51501 Tyler Street
Coachella, CA 92236

Riverside County Tax Assessor
4080 Lemon St., 1st Floor
Riverside, CA 92501

Claimants (including, without limitation, Randall C. Roberts)
c/o Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

Claimants' investigation is ongoing and it is anticipated that there will be additional witnesses.

3. List the date, time, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

This claim is for any and all damages and causes of action for that time period which goes as far back in the past as is provided for or allowed by applicable statutes of limitation or other applicable law (as extended, tolled or limited by applicable doctrines or other applicable law including, but not limited to, equitable tolling, fraud, concealment, waiver, estoppel and/or continuing harm) and extending through the present and continuing into the future, for so long as CVWD and/or Riverside have Imposed and continue to Impose the SWP Tax on Claimants.

Tell what happened (give complete information):

CVWD and Riverside County have Imposed and continue to Impose an illegal SWP Tax on Claimants in violation of Proposition 13, Proposition 218 and/or other applicable laws as set forth below. The unlawful SWP Tax disproportionately benefits agricultural property owners and water users (including members of the CVWD's Board of Directors) to the damage and detriment of Claimants by effectively forcing Claimants to subsidize agricultural water use and business operations. Thus, members of the CVWD's Board of Directors who are directly involved in the Imposition of the SWP Tax have received, and will continue to receive, significant personal financial benefits as a result of their unconstitutional acts and failure to recuse themselves pursuant to applicable conflict of interest rules.

The violations described herein are continuing and include, without limitation, the Imposition of SWP Taxes pursuant to ordinances, resolutions or other acts relating to the anticipated California WaterFix project, in addition to the ordinances, resolutions or other acts that are or have been operative at the time of this Claim.

In addition, this Claim pertains to any and all moneys collected as SWP Taxes and held by CVWD and/or Riverside as "Reserves" including, without limitation, those Reserves which were placed in an SWP Reserve Fund and thereafter transferred to other, different funds such as the Groundwater Replenishment Fund and/or general water funds. Such Reserves, including any and all interest accrued thereon, are believed to be in excess of \$100 million.

Proposition 13 Violations

In 1960, the voters in California approved the Burns-Porter Act to provide for the financing and construction of the California State Water Project ("SWP"). The SWP includes a water development and conveyance system that collects, stores and transfers water to various water agencies throughout the State of California, including CVWD.

Proposition 13 was approved by California voters in 1978 in order to limit ad valorem property taxes (i.e., taxes on property owners based on the value of their respective properties). Prior to the passage of Proposition 13, each local government could set or levy its property tax rate annually. Under Proposition 13, this was changed so that a property's overall ad valorem tax rate for all local governments is limited to 1% of the property's taxable value.

Section 1(b) of Proposition 13 further provides that the 1% tax limitation "shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to [July 1, 1978]." Thus, Proposition 13 restricted ad valorem property taxes while still honoring already-approved debts. Because the Burns-Porter Act was enacted before Proposition 13, CVWD and/or Riverside County have charged, and continue to charge, ad valorem property taxes in excess of 1% under the justification that is used to pay pre-approved "indebtedness" incurred in connection with financing the SWP. See also *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 910 (concluding that "the voters necessarily approved the use of local property taxes whenever the boards of directors of the agencies determined such use to be necessary to fund their water contract obligations").

However, in violation of Proposition 13, CVWD and/or Riverside County have Imposed SWP Taxes on Claimants in an amount in excess of 1% of the Claimants' property values for purposes other than paying the indebtedness incurred to fund the SWP (including fixed and variable SWP expenses). The SWP Taxes do not comply with the 1% limitation mandated by Proposition 13, and the taxes also do not fall within the Section 1(b) exception for assessments to pay pre-approved debt. All such taxes are, therefore, unconstitutional.

The amounts collected by CVWD and/or Riverside County as SWP Taxes greatly exceed what is necessary to fund the district's SWP obligations. For example, in 2017 CVWD collected approximately \$59 million from SWP Taxes even though CVWD's SWP expenses were only \$45 million that year. Thus, in 2017 alone CVWD collected approximately \$14 million more than it was permitted to under Proposition 13. Between 2012 and 2017, it appears that CVWD improperly collected approximately \$66 million more than the funds it needed to pay its SWP obligations.

In addition, CVWD's financial information shows that revenues from the SWP Taxes have been diverted to other purposes including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund, which disproportionately benefit agricultural

property owners and water users. Many Claimants who pay the SWP Taxes do not benefit from such use of funds at all.

CVWD's own legal consultants at Best Best & Krieger advised CVWD that SWP Taxes exceeding 1% can only be used to pay SWP invoices. However, CVWD intentionally disregarded this legal requirement and continued its illegal and unconstitutional practice of Imposing SWP Taxes in excess of the amounts actually required to fund the district's SWP obligations.

It further appears that CVWD has failed to properly adjust the amount of SWP Taxes it Imposes in accordance with SWP expenses. For example, as property taxes increase due to increases in assessed property values, CVWD Imposes the increased taxes even though the SWP expenses have not similarly increased. Thus, the taxes are Imposed without regard to actual SWP expenses and the additional funds raised are improperly diverted to other, non-SWP purposes.

Moreover, as noted in a California Attorney General Opinion, the Burns Porter Act expresses a preference for funding SWP-related expenses through water charges rather than taxation "in that it provides that the state system would be supported primarily by the sale of water and power...The Legislature and the voters clearly contemplated an essentially closed, self-supporting system...The ballot argument in favor of the Burns-Porter Act echoed this preference: 'The program will not be a burden on the taxpayer; no new state taxes are involved; the bonds are repaid from project revenues, through the sale of water and power. In other words, it will pay for itself.'" (61 Ops.Cal.Atty.Gen. 373 (No. CV 78-90, Aug. 18, 1978) (quoting Voters Pamphlet, Nov. 8, 1960, p.3).)

Although the Burns-Porter Act contemplates that local taxes may be required to pay SWP obligations, the authority to levy such taxation "is expressly limited to situations where it is necessary...Similarly, the contract with the Metropolitan Water District authorizes taxation only where revenue from the sale of water proves insufficient: 'If any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.'" (*Id.* (quoting Metropolitan Water District of Southern California contract, article 34(a).)

Thus, CVWD's ongoing practice of levying ad valorem property taxes for SWP-related expenses is contrary to the Burns-Porter Act, exceeds the district's taxation authority and violates the California Constitution, even where the revenue collected is actually used to pay SWP invoices. There is no indication that CVWD is unable to raise sufficient funds for SWP-related indebtedness by other means, such as volumetric water rates, which would place less of a disproportionate burden on non-agricultural property owners like Claimants. Indeed, other water districts fund the SWP through water rates and other means without relying on ad valorem property taxes.

Moreover, CVWD cannot levy ad valorem property taxes exceeding the 1% cap established by Proposition 13 to pay indebtedness that was not actually approved by the voters prior to enactment of Proposition 13. For obligations not approved prior to Proposition 13, ad valorem property taxes must be capped at 1%. See *Howard Jarvis Taxpayers Ass'n v. County of Orange* (2003) 110 Cal.App.4th 1375, 1384. "Preexisting obligations are the exception to Proposition 13; therefore, they must be specific, real, and existing. If they are not, the tax is barred." *Id.* Indeed, the exception to Proposition 13's 1% tax limit "is a safety net; it is not an open checkbook." *Id.* at 1387. CVWD may not impose and collect ad valorem taxes above the 1% limit by simply labeling the taxes as "SWP" related. To the extent that CVWD and/or Riverside County have Imposed SWP Taxes to pay for SWP projects added after Proposition 13 was enacted (such as, for example, the anticipated California WaterFix project), such taxes are void, invalid and unconstitutional.

The true extent of the unconstitutional imposition, collection and diversion of funds is not fully known at this time. Among other things, publically available information about the collection and use of funds does not fully account for CVWD's application of the amounts collected as SWP Taxes, and Claimants have not been provided with adequate information to ascertain the true purpose for which such taxes are levied and collected. Similarly, the invoices sent to Claimants by the Riverside County Tax Assessor fail to provide adequate or accurate information regarding the true nature, purpose and/or use of the funds imposed and collected.

Proposition 218 Violations

As explained above, the SWP Taxes Imposed by CVWD and/or Riverside County are being used for purposes other than satisfying CVWD's pre-approved SWP obligations. As such, CVWD and/or Riverside County are imposing and collecting unconstitutional local taxes, assessments, fees or other charges through the guise of SWP-related ad valorem taxes in order to circumvent the requirements of Proposition 218. For example, documents show that CVWD is diverting funds raised from SWP Taxes to the East Whitewater Replenishment Fund, the Groundwater Replenishment Fund and other water services, without any regard for compliance with Proposition 218.

Proposition 218 (also known as the "Right to Vote on Taxes Act") was approved by California voters in 1996. Among other things, Proposition 218 states that "local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Prop. 218, §2). It further states that the proposition should be liberally construed "to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, §5).

In particular, Proposition 218 focuses on exactions (whether they are called assessments, taxes, fees or charges) that are directly associated with property ownership. Under Proposition 218, the only levies which can be imposed on real property are the following:

1. The ad valorem property tax imposed pursuant to Article XIII and Article XIII A of this Constitution.
2. Any special tax receiving a two-thirds vote pursuant to Article XIII A, Section 4.
3. Assessments as provided by this article.
4. Fees or charges for property related services as provided by this article.

Under Proposition 218, "assessments" are levies upon real property by an agency for a special benefit conferred upon the real property. (Cal. Const. art. XIID, §2, subd. (b)). Proposition 218 provides that "[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel." (*Id.*) As the courts interpreting this Proposition have explained, "The general public should not be required to pay for special benefits for the few and the few specially benefitted should not be subsidized by the general public." *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545.

In this case, CVWD and/or Riverside County have violated these requirements because property owners are being forced to pay exactions which exceed the reasonable cost of the proportional special benefit conferred on their particular parcel, if any special benefit is conferred at all. In particular, agricultural property owners are receiving special benefits which are being subsidized by Claimants. Furthermore, it appears that the assessments are not supported by a detailed engineer's report as required by Proposition 218, and that CVWD has made no effort to determine the proportional special benefit derived by the various parcels within its service area.

Proposition 218 also sets forth the following requirements for property-related fees and charges: "A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service. (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed. (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel. (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner in question... (5) No fee or charge may be imposed for general government services..."

CVWD and/or Riverside County have violated each of these Proposition 218 requirements because the amounts unconstitutionally collected as SWP Taxes are not related to the actual cost of providing water to each of the Claimants' particular properties. The revenues exceed funds that are required to provide water to Claimants, are diverted to purposes other than SWP-related expenses, exceed the proportional cost of the water service attributable to each property, are not actually used or available to each of the Claimants, and appear to be diverted to general CVWD purposes.

In particular, revenues are raised based on the assessed value of the Claimants' respective properties without any regard to the actual cost of providing water to the particular properties. Water costs have nothing to do with assessed property values. For example, developed, urban land tends to have a higher assessed value than agricultural land even though agricultural properties tend to use more water. As a result, Claimants are forced to pay much more for water-related services even though it does not cost more to provide water to them and they may not actually derive any benefit from all of the services paid for by the revenue generated.

CVWD is also diverting the revenue to purposes (including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund) which disproportionately benefit agricultural properties. Some properties within CVWD's service area do not benefit from such programs at all. For instance, it appears that CVWD has diverted millions of dollars to services that benefit only those properties located in the East Whitewater area. Based on CVWD's publically available financial information, it appears that approximately \$19 million was unconstitutionally diverted to East Whitewater services in 2017 alone. Such improper diversions from the time period 2014 through 2018 are estimated to be over \$60 million.

In addition, since revenues are raised based on assessed property value, it is apparent that CVWD made no effort to perform a cost of service study in compliance with Proposition 218. In other words, CVWD did not perform a study to determine the actual cost of providing water to the particular properties in its service area to ensure that the property-related fees and charges it imposed comply with Proposition 218's requirements. The fact that no such study was conducted demonstrates that CVWD will not be able to meet its burden of showing that the revenues assessed and collected are proportional to the cost of water service attributable to each particular parcel in its service area that is subject to the SWP Taxes.

Furthermore, CVWD did not comply with the notice and hearing provisions for assessing property-related assessments, fees and/or charges that are set forth in Proposition 218.

Because Proposition 218's requirements for property-related assessments, fees and charges have not been met, the SWP Taxes imposed by CVWD and/or Riverside may constitute general or special "taxes" requiring voter approval. General taxes require a majority vote of registered voters, and special taxes require a two-thirds voter approval. (Cal. Const. art. XIII C, §2).

In 2010, Proposition 26 was enacted to provide a more specific definition of state and local "taxes." Pursuant to Proposition 26, all revenue measures imposed by local governments are "taxes" unless the measure falls within one of the following seven enumerated exemptions:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
6. A charge imposed as a condition of property development.
7. Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

(Cal. Const. art. XIII C, §1, subd. (e)).

The SWP Taxes that are the subject of this Claim do not fall within any of the seven enumerated exemptions. Accordingly, they may be deemed local "taxes" subject to voter approval requirements. Because CVWD and/or Riverside County have Imposed such "taxes" without any prior approval from the voters (and continue to do so), the taxes are unconstitutional, void and invalid under Proposition 218.

SWP Reserves

By in or about 2012, CVWD and/or Riverside had collected millions of dollars from Claimants through the Imposition of SWP Taxes, and CVWD placed certain of these monies in a

segregated, restricted SWP Reserve Fund. In accordance with the law discussed above, those ad valorem tax funds could only be used to repay the SWP debt which was approved prior to the passage of Proposition 13 (including fixed and variable SWP expenses). Moreover, CVWD's own internal documents acknowledge that the SWP Reserves were in a "restricted" fund that could only be used to pay SWP-related invoices. In violation of such laws and restrictions, CVWD transferred millions of dollars of SWP Reserves to other funds and for other purposes including, without limitation, the Groundwater Replenishment Fund.

The fact that CVWD and/or Riverside have continued to impose SWP taxes on Claimants in excess of actual SWP invoices further demonstrates that the SWP Reserves were misdirected and not spent for lawful purposes. CVWD has failed to adequately account for its expenditure of the SWP Reserves. However, upon information and belief, CVWD still has millions of dollars of SWP Reserves (including interest accrued thereon) which must either be returned to Claimants or applied toward pre-Proposition 13 SWP debt in a manner that reduces the SWP Taxes Imposed on Claimants in the future.

Summary

The SWP Taxes which are the subject of this Claim are unlawful, void and invalid pursuant to Proposition 13, Proposition 218 and/or other applicable law whether they are characterized as taxes, assessments, fees or charges.

Among other things, the SWP Taxes (1) do not comply with the requirements for ad valorem property taxes under Proposition 13 because they exceed 1% of property values and are not necessary to pay SWP-related debt that was approved prior to the enactment of Proposition 13, (2) do not comply with the requirements for local "taxes" because they were not approved by the voters or otherwise subject to an exemption expressly set forth in Proposition 26, and (3) do not comply with the requirements for property related assessments, fees or charges under Proposition 218 because, among other reasons, they are not proportional to the special benefit or service actually received by Claimants' particular properties.

Accordingly, the Imposition and misuse of the SWP Taxes and Reserves as described herein violate the California Constitution and/or other applicable law. Any and all funds collected for the stated purpose of paying SWP expenses (including any and all interest accrued thereon) must be applied to lawful purposes which directly pay for SWP's fixed and variable expenses or, if not, must be refunded.

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4. **Give a general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.**

Claimants have been damaged by violations of Proposition 13 because, among other things, they have been forced to pay ad valorem property taxes above 1% of the assessed value of their respective properties for purposes other than paying CVWD's pre-approved SWP obligations and for purposes that disproportionately benefit agricultural property owners and water users. Moreover, Claimants have been forced to pay these valorem taxes even though SWP expenses could be funded through other, more equitable means such as volumetric water rates and/or application of SWP Reserves.

Claimants have been damaged by violations of Proposition 218 because, among other things, they have been forced to pay property-related assessments, taxes, fees or charges under the guise of purported SWP-related ad valorem taxes, which were not approved by the voters, do not satisfy Proposition 218's requirements for property-related assessments, fees and charges, and disproportionately benefit agricultural property owners and water users.

Accordingly, any and all ordinances, resolutions or other acts which impose, extend, increase and/or enforce such unconstitutional exactions should be declared void, invalid and unenforceable, and CVWD and Riverside County should be enjoined from their continued collection and enforcement of such unconstitutional exactions. In addition, Claimants are entitled to restitution, credits, refunds and/or reimbursement of any and all amounts CVWD and/or Riverside County collected from Claimants in violation of the Constitution or other applicable laws.

This claim is based on preliminary investigation, and there may be other grounds on which the subject SWP Tax is subject to legal challenge. Nothing contained or omitted herein or in any other claim or communication shall constitute or is intended to or shall operate as an admission or as an election, waiver or relinquishment of or limitation on any right, remedy or defense, at law or in equity, all of which are reserved.

5. Give the name or names of the public employee or employees causing the injury, damage, or loss, if known.

CVWD including, without limitation, its board members, officers and/or other person(s) in control of the matters alleged herein.


Riverside County including, without limitation, the Riverside County Tax Assessor, and the County's agencies, supervisors and/or other person(s) in control of the matters alleged herein.

6. The amount claimed if it totals less than \$10,000 as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds \$10,000, no dollar amount shall be

included in the claim. However, it shall indicate whether the claim would be a limited civil case.

Damages exceed \$10,000. The claim would be filed as an unlimited civil class action case and/or other unlimited civil case.

Date: August 29, 2018

Signature: 

Costell & Cornelius Law Corporation
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
Attorneys for Claimant Randall C. Roberts

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On August 30, 2018, I served the foregoing document described as, **AMENDED AND RESTATED CLAIM**, as follows:

() I caused such envelope(s) to be deposited in the mail at Santa Monica, California.

() **BY FACSIMILE TRANSMISSION:** I caused such documents to be personally delivered to the parties at the facsimile numbers listed above.

Coachella Valley Water District
Claims
75515 Hovley Lane East
Palm Desert, CA 92211
Attn: Chris Chaffin

(X) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Karen Brown

Exhibit 4



COACHELLA VALLEY WATER DISTRICT

Established in 1918 as a public agency

GENERAL MANAGER
Jim Barrett

ASSISTANT GENERAL MANAGER
Robert Cheng

September 12, 2018

Randall C. Roberts
c/o Alexandre I. Cornelius, Esq.
Costell & Cornelius Law Corp.
1299 Ocean Avenue, Suite 450
Santa Monica, CA 90401

File: 0091.2
Incident #: 2180521.0

Re: August 30, 2018 Claim

REJECTION OF CLAIM FOR DAMAGES

Dear Mr. Roberts:

Thank you for your August 29, 2018 letter enclosing an amended claim. We are glad to note that you and The District agree that your claim is subject to the one-year claiming requirement of the Government Claims Act and is not subject to late-claim procedures available for 6-month claims.

Please be advised that your claim was heard by The District's Board of Directors on September 11, 2018 and was denied on its merits.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in this Claim. (See, Gov. Code, § 945.6.) The time for filing in federal court may be less than six (6) months. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Should you file a lawsuit in this matter, which is determined to be in bad faith and without reasonable cause, please be advised that CVWD can, and will, attempt to recover all of its defense costs as allowed by California Code of Civil Procedure Sections 128.5 and 1038.

Sincerely,

Chris Chaffin
Claims Manager
cchaffin@cvwd.org



Exhibit 5

COUNTY OF RIVERSIDE

CLAIM FOR DAMAGES TO PERSON OR PROPERTY



INSTRUCTIONS:

1. Read claim *thoroughly*.
2. Fill out claim as indicated; attach additional information if necessary.
3. This office needs the original completed claim form and clear readable copies of attachments (if any) if originals are not available.
4. This claim form *must* be signed.

OFFICE USE ONLY

DELIVER OR U.S. MAIL TO:

CLERK OF THE BOARD OF SUPERVISORS
ATTN: CLAIMS DIVISION
P.O. BOX 1147, 4080 LEMON ST, 1ST FL.
RIVERSIDE, CA. 92502-1147 (951) 955-1060

TIME STAMP HERE

1. FULL NAME OF CLAIMANT		8. WHY DO YOU CLAIM THE COUNTY IS RESPONSIBLE?	
2. MAILING ADDRESS (STREET / PO BOX)			
CITY	STATE	ZIP CODE	
HOME TELEPHONE ()	BUSINESS TELEPHONE ()		
3. WHEN DID DAMAGE OR INJURY OCCUR (PLEASE BE EXACT)		9. NAMES OF ANY COUNTY EMPLOYEES (AND THEIR DEPARTMENTS) INVOLVED IN INJURY OR DAMAGE (IF APPLICABLE).	
4. WHERE DID DAMAGE OR INJURY OCCUR?		NAME:	DEPARTMENT:
STREET CITY STATE ZIP CODE		10. WITNESSES TO DAMAGE OR INJURY: LIST ALL PERSONS AND ADDRESSES OF PERSONS KNOWN TO HAVE INFORMATION:	
5. DESCRIBE IN DETAIL HOW DAMAGE OR INJURY OCCURRED:		NAME	PHONE
		ADDRESS	
		NAME	PHONE
		ADDRESS	
		NAME	PHONE
		ADDRESS	
6. WERE POLICE OR PARAMEDICS CALLED? <input type="checkbox"/> YES <input type="checkbox"/> NO		11. LIST DAMAGES INCURRED TO DATE (attach copies of receipts or repair estimates)	
7. IF PHYSICIAN/HOSPITAL WAS VISITED DUE TO INJURY, INCLUDE DATE OF FIRST VISIT AND HOSPITAL'S NAME, ADDRESS AND PHONE NUMBER:			
DATE OF FIRST VISIT	PHYSICIAN'S/HOSPITAL'S NAME		
PHYSICIAN'S/HOSPITAL'S ADDRESS	PHONE: ()		
		TOTAL DAMAGES TO DATE	TOTAL ESTIMATED PROSPECTIVE DAMAGES
		\$	\$

THIS CLAIM MUST BE SIGNED TO BE VALID.

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (PENAL CODE SECTION 72.)

WARNING:

- CLAIMS FOR DEATH, INJURY TO PERSON OR TO PERSONAL PROPERTY MUST BE FILED NOT LATER THAN SIX (6) MONTHS AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)
- ALL OTHER CLAIMS FOR DAMAGES MUST BE FILED NOT LATER THAN ONE (1) YEAR AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)
- SUBJECT TO CERTAIN EXCEPTIONS. YOU HAVE ONLY SIX (6) MONTHS FROM THE DATE OF THE WRITTEN NOTICE OF REJECTION OF YOUR CLAIM TO FILE A COURT ACTION. (GOVERNMENT CODE SECTION 945.6)
- IF WRITTEN NOTICE OF REJECTION OF YOUR CLAIM IS NOT GIVEN, YOU HAVE TWO (2) YEARS FROM ACCRUAL OF THE CAUSE OF ACTION TO FILE A COURT ACTION. (GOVERNMENT CODE SECTION 945.6)

12. CLAIMANT OR PERSON FILING ON HIS/HER BEHALF		13. PRINT OR TYPE NAME		DATE
 SIGNATURE		Sara McDuffie, Esq.		5/30/18
		RELATIONSHIP TO CLAIMANT		

CLAIM FOR DAMAGES

COUNTY OF RIVERSIDE

1. FULL NAME OF CLAIMANT

Randall C. Roberts, Individually and as Trustee of the Roberts Family Trust dated November 17, 2010, on behalf of himself and all others similarly situated (including, without limitation, all current and former non-agricultural property owners, taxpayers and water customers within the Coachella Valley Water District ("CVWD") who paid fees, charges, taxes, assessments and/or other exactions characterized as "ad valorem property taxes" that were unconstitutional or otherwise illegal and that were imposed, extended, increased and/or collected by CVWD and/or Riverside County ("Riverside")) (hereinafter referred to as "Claimants").

49790 Desert Vista Dr.
Palm Desert, CA 92260
(520) 834-3932

2. MAILING ADDRESS

Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

3. WHEN DID DAMAGE OR INJURY OCCUR

July 1, 2013 through the present, and continuing into the future, each time that Claimants have paid, or will pay, fees, charges, taxes, assessments and/or other exactions characterized as "ad valorem property taxes" that were unconstitutional or otherwise illegal and that were imposed, extended, increased and/or collected by CVWD and/or Riverside.

4. WHERE DID DAMAGE OR INJURY OCCUR?

Riverside County, Coachella Valley Water District service area

5. **DESCRIBE IN DETAIL HOW DAMAGE OR INJURY OCCURRED**

CVWD and/or Riverside County have continued to impose, extend, increase and/or collect certain purported “ad valorem property taxes” from water customers, property owners and/or taxpayers in the CVWD service area in violation of Proposition 13, Proposition 218 and/or other applicable laws as set forth below. Such unlawful assessments, taxes, fees or charges disproportionately benefit agricultural property owners and water users (including members of the CVWD’s Board of Directors) to the damage and detriment of Claimants. Thus, members of the CVWD’s Board of Directors who are directly involved in the imposition, extension, increase and/or collection of the purported SWP-related ad valorem taxes (including, without limitation, Directors Powell, Nelson and Bianco) have received, and will continue to receive, significant personal financial benefits as a result of their unconstitutional acts and failure to recuse themselves pursuant to applicable conflict of interest rules.

The violations described herein are continuing and include, without limitation, the imposition, extension, increase and/or collection of assessments, taxes, fees or charges pursuant to ordinances, resolutions or other acts relating to the California WaterFix project, in addition to the ordinances, resolutions or other acts that are or have been operative from and after July 1, 2013.

Proposition 13 Violations

In 1960, the voters in California approved the Burns-Porter Act to provide for the financing and construction of the California State Water Project (“SWP”). The SWP includes a water development and conveyance system that collects, stores and transfers water to various water agencies throughout the State of California, including CVWD.

Proposition 13 was approved by California voters in 1978 in order to limit ad valorem property taxes (i.e., taxes on property owners based on the value of their respective properties). Prior to the passage of Proposition 13, each local government could set or levy its property tax rate annually. Under Proposition 13, this was changed so that a property’s overall ad valorem tax rate for all local governments is limited to 1% of the property’s taxable value.

Section 1(b) of Proposition 13 further provides that the 1% tax limitation “shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to [July 1, 1978].” Thus, Proposition 13 restricted ad valorem property taxes while still honoring already-approved debts. Because the Burns-Porter Act was enacted before Proposition 13, CVWD and/or Riverside County have charged, and continue to charge, ad valorem property taxes in excess of 1% under the justification that is used to pay pre-approved “indebtedness” incurred in connection with financing the SWP. See also *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 910 (concluding that “the

voters necessarily approved the use of local property taxes whenever the boards of directors of the agencies determined such use to be necessary to fund their water contract obligations”).

However, in violation of Proposition 13, CVWD and/or Riverside County have imposed, extended, increased and/or collected ad valorem property taxes from CVWD’s water customers in an amount in excess of 1% of the customers’ property value for purposes other than paying the indebtedness incurred to fund the SWP. The ad valorem taxes do not comply with the 1% limitation mandated by Proposition 13, and the taxes also do not fall within the Section 1(b) exception for assessments to pay pre-approved debt. All such taxes are, therefore, unconstitutional.

The amounts collected by CVWD and/or Riverside County through purported SWP-related ad valorem taxes greatly exceed what is necessary to fund the district’s SWP obligations. For example, in 2017 CVWD collected approximately \$59 million from SWP-related ad valorem taxes even though CVWD’s SWP expenses were only \$45 million that year. Thus, in 2017 alone CVWD collected approximately \$14 million more than it was permitted to under Proposition 13. Between 2012 and 2017, it appears that CVWD improperly collected approximately \$66 million more than the funds it needed to pay its SWP obligations.

In addition, CVWD’s financial information shows that revenues from the purported SWP-related ad valorem taxes have been diverted to other purposes including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund, which disproportionately benefit agricultural property owners and water users. Many Claimants who pay the SWP-related ad valorem taxes do not benefit from such use of funds at all.

CVWD’s own legal consultants at Best Best & Krieger advised CVWD that the SWP-related ad valorem taxes exceeding 1% can only be used to pay SWP invoices. However, CVWD intentionally disregarded this legal requirement and continued its illegal and unconstitutional practice of imposing, extending, increasing and/or collecting purported SWP-related ad valorem taxes in excess of the amounts actually required to fund the district’s SWP obligations.

It further appears that CVWD has failed to properly adjust the amount of purported SWP-related ad valorem taxes it imposes and collects in accordance with SWP expenses. For example, as property taxes increase due to increases in assessed property values, CVWD imposes, collects and uses the increased taxes even though the SWP expenses have not similarly increased. Thus, the taxes are imposed and collected without regard to actual SWP expenses and the additional funds raised are improperly diverted to other, non-SWP purposes.

Moreover, as noted in a California Attorney General Opinion, the Burns Porter Act expresses a preference for funding SWP-related expenses through water charges rather than taxation “in that it provides that the state system would be supported primarily by the sale of water and power...The Legislature and the voters clearly contemplated an essentially closed, self-

supporting system...The ballot argument in favor of the Burns-Porter Act echoed this preference: 'The program will not be a burden on the taxpayer; no new state taxes are involved; the bonds are repaid from project revenues, through the sale of water and power. In other words, it will pay for itself.'" (61 Ops.Cal.Atty.Gen. 373 (No. CV 78-90, Aug. 18, 1978) (quoting Voters Pamphlet, Nov. 8, 1960, p.3).)

Although the Burns-Porter Act contemplates that local taxes may be required to pay SWP obligations, the authority to levy such taxation "is expressly limited to situations where it is necessary...Similarly, the contract with the Metropolitan Water District authorizes taxation only where revenue from the sale of water proves insufficient: 'If any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.'" (*Id.* (quoting Metropolitan Water District of Southern California contract, article 34(a).)

Thus, CVWD's ongoing practice of levying ad valorem property taxes for SWP-related expenses is contrary to the Burns-Porter Act, exceeds the district's taxation authority and violates the California Constitution, even where the revenue collected is actually used to pay SWP invoices. There is no indication that CVWD is unable to raise sufficient funds for SWP-related indebtedness by other means, such as volumetric water rates, which would place less of a disproportionate burden on non-agricultural property owners like Claimants. Indeed, other water districts fund the SWP through water rates and other means without relying on ad valorem property taxes.

Moreover, CVWD cannot levy ad valorem property taxes exceeding the 1% cap established by Proposition 13 to pay indebtedness that was not actually approved by the voters prior to enactment of Proposition 13. For obligations not approved prior to Proposition 13, ad valorem property taxes must be capped at 1%. *See Howard Jarvis Taxpayers Ass'n v. County of Orange* (2003) 110 Cal.App.4th 1375, 1384. "Preexisting obligations are the exception to Proposition 13; therefore, they must be specific, real, and existing. If they are not, the tax is barred." *Id.* Indeed, the exception to Proposition 13's 1% tax limit "is a safety net; it is not an open checkbook." *Id.* at 1387. CVWD may not impose and collect ad valorem taxes above the 1% limit by simply labeling the taxes as "SWP" related. To the extent that CVWD and/or Riverside County have imposed, extended and/or increased ad valorem property taxes to pay for SWP projects added after Proposition 13 was enacted (such as, for example, the California WaterFix project), such taxes are void, invalid and unconstitutional.

The true extent of the unconstitutional imposition, collection and diversion of funds is not fully known at this time. Among other things, publically available information about the collection and use of funds does not fully account for CVWD's application of the amounts collected as purported SWP-related ad valorem property taxes, and Claimants have not been provided with adequate information to ascertain the true purpose for which such taxes are levied and

collected. Similarly, the invoices sent to Claimants by the Riverside County Tax Assessor fail to provide adequate or accurate information regarding the true nature, purpose and/or use of the funds imposed and collected.

Proposition 218 Violations

As explained above, the purported SWP-related ad valorem property taxes imposed, extended, increased and/or collected by CVWD and/or Riverside County are being used for purposes other than satisfying CVWD's pre-approved SWP obligations. As such, it appears that CVWD and/or Riverside County are imposing and collecting unconstitutional local taxes, assessments, fees or other charges through the guise of SWP-related ad valorem taxes in order to circumvent the requirements of Proposition 218. For example, CVWD is apparently diverting funds raised from the purported SWP-related ad valorem taxes to the East Whitewater Replenishment Fund, the Groundwater Replenishment Fund and other water services, without any regard for compliance with Proposition 218.

Proposition 218 (also known as the "Right to Vote on Taxes Act") was approved by California voters in 1996. Among other things, Proposition 218 states that "local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Prop. 218, §2). It further states that the proposition should be liberally construed "to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, §5).

In particular, Proposition 218 focuses on exactions (whether they are called assessments, taxes, fees or charges) that are directly associated with property ownership. Under Proposition 218, the only levies which can be imposed on real property are the following:

1. The ad valorem property tax imposed pursuant to Article XIII and Article XIII A of this Constitution.
2. Any special tax receiving a two-thirds vote pursuant to Article XIII A, Section 4.
3. Assessments as provided by this article.
4. Fees or charges for property related services as provided by this article.

Under Proposition 218, "assessments" are levies upon real property by an agency for a special benefit conferred upon the real property. (Cal. Const. art. XIII D, §2, subd. (b)). Proposition 218 provides that "[n]o assessment shall be imposed on any parcel which exceeds the reasonable

cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel.” (*Id.*) As the courts interpreting this Proposition have explained, “The general public should not be required to pay for special benefits for the few and the few specially benefitted should not be subsidized by the general public.” *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545.

In this case, CVWD and/or Riverside County have violated these requirements because property owners are being forced to pay exactions which exceed the reasonable cost of the proportional special benefit conferred on their particular parcel, if any special benefit is conferred at all. In particular, it appears that agricultural property owners are receiving special benefits which are being subsidized by Claimants. Furthermore, it appears that the assessments are not supported by a detailed engineer’s report as required by Proposition 218, and that CVWD has made no effort to determine the proportional special benefit derived by the various parcels within its service area.

Proposition 218 also sets forth the following requirements for property-related fees and charges: “A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service. (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed. (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel. (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner in question... (5) No fee or charge may be imposed for general government services...”

It appears that CVWD and/or Riverside County have violated each of these Proposition 218 requirements because the amounts unconstitutionally collected as purported SWP-related ad valorem property taxes are not related to the actual cost of providing water to each of the Claimants’ particular properties. The revenues exceed funds that are required to provide water to Claimants, are diverted to purposes other than SWP-related expenses, exceed the proportional cost of the water service attributable to each property, are not actually used or available to each of the Claimants, and appear to be diverted to general CVWD purposes.

In particular, revenues are raised based on the assessed value of the Claimants’ respective properties without any regard to the actual cost of providing water to the particular properties. Water costs have nothing to do with assessed property values. For example, developed, urban land tends to have a higher assessed value than agricultural land even though agricultural properties tend to use more water. As a result, Claimants are forced to pay much more for water-related services even though it does not cost more to provide water to them and they may not actually derive any benefit from all of the services paid for by the revenue generated.

It appears that CVWD is diverting the revenue to purposes (including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund) which disproportionately benefit agricultural properties. Some properties within CVWD's service area do not benefit from such programs at all. For instance, it appears that CVWD has diverted millions of dollars to services that benefit only those properties located in the East Whitewater area. Based on CVWD's publically available financial information, it appears that approximately \$19 million was unconstitutionally diverted to East Whitewater services in 2017 alone. Such improper diversions from the time period 2014 through 2018 are estimated to be over \$60 million.

In addition, since revenues are raised based on assessed property value, it appears that CVWD made no effort to perform a cost of service study in compliance with Proposition 218. In other words, CVWD did not perform a study to determine the actual cost of providing water to the particular properties in its service area to ensure that the property-related fees and charges it imposed comply with Proposition 218's requirements. The fact that no such study was conducted demonstrates that CVWD will not be able to meet its burden of showing that the revenues assessed and collected are proportional to the cost of water service attributable to each particular parcel in its service area that is subject to the purported SWP-related ad valorem property taxes.

Furthermore, CVWD did not comply with the notice and hearing provisions for assessing property-related assessments, fees and/or charges that are set forth in Proposition 218.

Because Proposition 218's requirements for property-related assessments, fees and charges have not been met, the exactions imposed, extended, increased and/or collected by CVWD and/or Riverside County under the guise of SWP-related ad valorem property taxes may constitute general or special "taxes" requiring voter approval. General taxes require a majority vote of registered voters, and special taxes require a two-thirds voter approval. (Cal. Const. art. XIII C, §2).

In 2010, Proposition 26 was enacted to provide a more specific definition of state and local "taxes." Pursuant to Proposition 26, all revenue measures imposed by local governments are "taxes" unless the measure falls within one of the following seven enumerated exemptions:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
6. A charge imposed as a condition of property development.
7. Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

(Cal. Const. art. XIII C, §1, subd. (e)).

The exactions that are the subject of this Claim do not fall within any of the seven enumerated exemptions. Accordingly, the exactions may be deemed local “taxes” subject to voter approval requirements. Because CVWD and/or Riverside County have imposed, extended, increased and/or collected such “taxes” without any prior approval from the voters (and continue to do so), the taxes are unconstitutional, void and invalid under Proposition 218.

Summary

The purported SWP-related ad valorem property taxes which are the subject of this Claim are unlawful, void and invalid pursuant to Proposition 13, Proposition 218 and/or other applicable law whether they are characterized as taxes, assessments, fees or charges.

Among other things, the exactions (1) do not comply with the requirements for ad valorem property taxes under Proposition 13 because they exceed 1% of property values and are not necessary to pay SWP-related debt that was approved prior to the enactment of Proposition 13, (2) do not comply with the requirements for local “taxes” because they were not approved by the voters or otherwise subject to an exemption expressly set forth in Proposition 26, and (3) do not comply with the requirements for property related assessments, fees or charges under Proposition 218 because, among other reasons, they are not proportional to the special benefit or service actually received by Claimants’ particular properties.

Accordingly, the purported SWP-related exactions are not permitted and violate the California Constitution and/or other applicable law.

6. WERE POLICE OR PARAMEDICS CALLED?

No.

7. IF PHYSICIAN/HOSPITAL WAS VISITED DUE TO INJURY, INCLUDE DATE OF FIRST VISIT AND HOSPITAL'S NAME, ADDRESS AND PHONE NUMBER

Not applicable.

8. WHY DO YOU CLAIM THE COUNTY IS RESPONSIBLE?

Among other things, Riverside imposed, extended, increased and/or collected the "ad valorem property taxes" which are the subject of this claim. The "ad valorem property taxes" which are the subject of this claim appear as a "charge" on Claimants' Riverside County Secured Property Tax Bills.

9. NAMES OF ANY COUNTY EMPLOYEES (AND THEIR DEPARTMENTS) INVOLVED IN INJURY OR DAMAGE (IF APPLICABLE)

CVWD including, without limitation, its board members, officers and/or other person(s) in control of the matters alleged herein.

Riverside County including, without limitation, the Riverside County Tax Assessor, and the County's agencies, supervisors and/or other person(s) in control of the matters alleged herein.

10. WITNESSES TO DAMAGE OR INJURY

CVWD's current and former board members, employees and staff;
CVWD's current and former water consultants;
CVWD's current and former accountants and auditors; and
CVWD's current and former legal consultants.
Coachella Valley Water District
51501 Tyler Street
Coachella, CA 92236

Riverside County Tax Assessor
4080 Lemon St., 1st Floor
Riverside, CA 92501

Claimants (including, without limitation, Randall C. Roberts)
c/o Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

Claimants' investigation is ongoing and it is anticipated that there will be additional witnesses.

11. LIST DAMAGES INCURRED TO DATE

Claimants have been damaged by violations of Proposition 13 because, among other things, they have been forced to pay ad valorem property taxes above 1% of the assessed value of their respective properties for purposes other than paying CVWD's pre-approved SWP obligations and for purposes that disproportionately benefit agricultural property owners and water users. Moreover, Claimants have been forced to pay these valorem taxes even though SWP expenses could be funded through other, more equitable means such as volumetric water rates.

Claimants have been damaged by violations of Proposition 218 because, among other things, they have been forced to pay property-related assessments, taxes, fees or charges under the guise of purported SWP-related ad valorem taxes, which were not approved by the voters, do not satisfy Proposition 218's requirements for property-related assessments, fees and charges, and disproportionately benefit agricultural property owners and water users.

Accordingly, any and all ordinances, resolutions or other acts which impose, extend, increase and/or enforce such unconstitutional exactions should be declared void, invalid and unenforceable, and CVWD and Riverside County should be enjoined from their continued collection and enforcement of such unconstitutional exactions. In addition, Claimants are entitled to restitution, refunds and/or reimbursement of any and all amounts CVWD and/or Riverside County collected from Claimants in violation of the Constitution or other applicable laws.

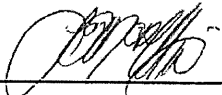
This claim is based on preliminary investigation, and there may be other grounds on which the subject "ad valorem property tax" is subject to legal challenge. Nothing contained or omitted herein or in any other claim or communication shall constitute or is intended to or shall operate

as an admission or as an election, waiver or relinquishment of or limitation on any right, remedy or defense, at law or in equity, all of which are reserved.

Damages exceed \$10,000. The claim would be filed as an unlimited civil class action case and/or other unlimited civil case.

Date: May 30, 2018

Signature:



Costell & Cornelius Law Corporation
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
Attorneys for Claimant Randall C. Roberts

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1299 Ocean Ave., Suite 450, Santa Monica, CA 90401.

On May 30, 2018, I served the foregoing document described as, **CLAIM FOR DAMAGES**, as follows:

(X) **By CERTIFIED MAIL, RETURN RECEIPT REQUESTED:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Santa Monica, California.

Clerk of the Board of Supervisors
Attn: Claims Division
P.O. Box 1147, 4080 Lemon St., 1st Floor
Riverside, CA 92502-1147

() I caused such envelope(s) to be deposited in the mail at Santa Monica, California.

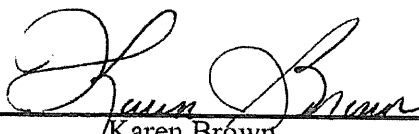
() **BY OVERNIGHT MAIL:** I placed a true copy of said document in a sealed **FEDERAL EXPRESS PACKAGE** addressed as indicated above, with delivery fees provided for, and, deposited said envelope in a box regularly maintained by **FEDERAL EXPRESS**, for next day delivery.

() **BY FACSIMILE TRANSMISSION:** I caused such documents to be personally delivered to the parties at the facsimile numbers listed above.

() **BY PERSONAL SERVICE:** I caused such documents to be personally delivered to the parties at the addresses listed below:

(X) Executed on May 30, 2018, at Santa Monica, California.

(X) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Karen Brown

Exhibit 6



OFFICE OF THE
CLERK OF THE BOARD OF SUPERVISORS
1st FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060 FAX: (951) 955-1071

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

July 30, 2018

RANDALL C. ROBERTS
c/o COSTELL & CORNELIUS LAW CORP.
1299 OCEAN AVE., STE. 450
SANTA MONICA, CA 90401

RE: NOTICE OF REJECTION OF CLAIM BY OPERATION OF LAW

Claimant: ROBERTS, Randall C. (Individually and as Trustee of Roberts Family Trust
dated November 17, 2010)
Date of Loss: 07/01/13 through present
Claim No: 232-18
Date Claim Received: 06/05/18

Notice is hereby given that the Claim you presented to the Clerk of the Board of Supervisors, was rejected by operation of law on July 30, 2018.

Warning

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This warning, and the six-month deadline, only apply to the extent a lawsuit would be based on California law, and do not apply to the extent a lawsuit would be based on federal law.

Kecia Harper-Ihem
Clerk to the Board of Supervisors

By: *Cecilia Gil*
Board Assistant

I declare that my business address is 1st Floor, County Administrative Center, 4080 Lemon Street, Riverside California, that I am a citizen of the United States of America, employed by the County of Riverside and am not a party to the action. On the date stated below I mailed the foregoing notice by depositing a copy thereof in the outgoing mail at Riverside, California, in a sealed envelope, with postage prepaid, addressed to the person(s) listed above. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Riverside, California on July 30, 2018.

Cecilia Gil
Cecilia Gil, Board Assistant

cc: Co.Co. Ronald Patel

GL094

Exhibit 7

AMENDED AND RESTATED CLAIM FOR DAMAGES

COUNTY OF RIVERSIDE

1. FULL NAME OF CLAIMANT

Randall C. Roberts, Individually and as Trustee of the Roberts Family Trust dated November 17, 2010, on behalf of himself and all others similarly situated (including, without limitation, all current and former non-agricultural property owners, taxpayers and water customers within the Coachella Valley Water District ("CVWD") who paid fees, charges, taxes, assessments and/or other exactions characterized as "ad valorem property taxes" for the California State Water Project ("SWP Taxes") that were imposed, extended, increased and/or collected ("Imposed") by CVWD and/or Riverside County ("Riverside")) (hereinafter referred to as "Claimants").

49790 Desert Vista Dr.
Palm Desert, CA 92260
(520) 834-3932

2. MAILING ADDRESS

Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

3. WHEN DID DAMAGE OR INJURY OCCUR

This claim is for any and all damages and causes of action for that time period which goes as far back in the past as is provided for or allowed by applicable statutes of limitation or other applicable law (as extended, tolled or limited by applicable doctrines or other applicable law including, but not limited to, equitable tolling, fraud, concealment, waiver, estoppel and/or continuing harm) and extending through the present and continuing into the future, for so long as CVWD and/or Riverside have Imposed and continue to Impose the SWP Tax on Claimants.

4. WHERE DID DAMAGE OR INJURY OCCUR?

Riverside County, Coachella Valley Water District service area

5. **DESCRIBE IN DETAIL HOW DAMAGE OR INJURY OCCURRED**

CVWD and Riverside County have Imposed and continue to Impose an illegal SWP Tax on Claimants in violation of Proposition 13, Proposition 218 and/or other applicable laws as set forth below. The unlawful SWP Tax disproportionately benefits agricultural property owners and water users (including members of the CVWD's Board of Directors) to the damage and detriment of Claimants by effectively forcing Claimants to subsidize agricultural water use and business operations. Thus, members of the CVWD's Board of Directors who are directly involved in the Imposition of the SWP Tax have received, and will continue to receive, significant personal financial benefits as a result of their unconstitutional acts and failure to recuse themselves pursuant to applicable conflict of interest rules.

The violations described herein are continuing and include, without limitation, the Imposition of SWP Taxes pursuant to ordinances, resolutions or other acts relating to the anticipated California WaterFix project, in addition to the ordinances, resolutions or other acts that are or have been operative at the time of this Claim.

In addition, this Claim pertains to any and all moneys collected as SWP Taxes and held by CVWD and/or Riverside as "Reserves" including, without limitation, those Reserves which were placed in an SWP Reserve Fund and thereafter transferred to other, different funds such as the Groundwater Replenishment Fund and/or general water funds. Such Reserves, including any and all interest accrued thereon, are believed to be in excess of \$100 million.

Proposition 13 Violations

In 1960, the voters in California approved the Burns-Porter Act to provide for the financing and construction of the California State Water Project ("SWP"). The SWP includes a water development and conveyance system that collects, stores and transfers water to various water agencies throughout the State of California, including CVWD.

Proposition 13 was approved by California voters in 1978 in order to limit ad valorem property taxes (i.e., taxes on property owners based on the value of their respective properties). Prior to the passage of Proposition 13, each local government could set or levy its property tax rate annually. Under Proposition 13, this was changed so that a property's overall ad valorem tax rate for all local governments is limited to 1% of the property's taxable value.

Section 1(b) of Proposition 13 further provides that the 1% tax limitation "shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to [July 1, 1978]." Thus, Proposition 13 restricted ad valorem property taxes while still honoring already-approved debts. Because the Burns-Porter

Act was enacted before Proposition 13, CVWD and/or Riverside County have charged, and continue to charge, ad valorem property taxes in excess of 1% under the justification that is used to pay pre-approved "indebtedness" incurred in connection with financing the SWP. See also *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 910 (concluding that "the voters necessarily approved the use of local property taxes whenever the boards of directors of the agencies determined such use to be necessary to fund their water contract obligations").

However, in violation of Proposition 13, CVWD and/or Riverside County have Imposed SWP Taxes on Claimants in an amount in excess of 1% of the Claimants' property values for purposes other than paying the indebtedness incurred to fund the SWP (including fixed and variable SWP expenses). The SWP Taxes do not comply with the 1% limitation mandated by Proposition 13, and the taxes also do not fall within the Section 1(b) exception for assessments to pay pre-approved debt. All such taxes are, therefore, unconstitutional.

The amounts collected by CVWD and/or Riverside County as SWP Taxes greatly exceed what is necessary to fund the district's SWP obligations. For example, in 2017 CVWD collected approximately \$59 million from SWP Taxes even though CVWD's SWP expenses were only \$45 million that year. Thus, in 2017 alone CVWD collected approximately \$14 million more than it was permitted to under Proposition 13. Between 2012 and 2017, it appears that CVWD improperly collected approximately \$66 million more than the funds it needed to pay its SWP obligations.

In addition, CVWD's financial information shows that revenues from the SWP Taxes have been diverted to other purposes including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund, which disproportionately benefit agricultural property owners and water users. Many Claimants who pay the SWP Taxes do not benefit from such use of funds at all.

CVWD's own legal consultants at Best Best & Krieger advised CVWD that SWP Taxes exceeding 1% can only be used to pay SWP invoices. However, CVWD intentionally disregarded this legal requirement and continued its illegal and unconstitutional practice of Imposing SWP Taxes in excess of the amounts actually required to fund the district's SWP obligations.

It further appears that CVWD has failed to properly adjust the amount of SWP Taxes it Imposes in accordance with SWP expenses. For example, as property taxes increase due to increases in assessed property values, CVWD Imposes the increased taxes even though the SWP expenses have not similarly increased. Thus, the taxes are Imposed without regard to actual SWP expenses and the additional funds raised are improperly diverted to other, non-SWP purposes.

Moreover, as noted in a California Attorney General Opinion, the Burns Porter Act expresses a preference for funding SWP-related expenses through water charges rather than taxation "in that it provides that the state system would be supported primarily by the sale of water and

power...The Legislature and the voters clearly contemplated an essentially closed, self-supporting system...The ballot argument in favor of the Burns-Porter Act echoed this preference: 'The program will not be a burden on the taxpayer; no new state taxes are involved; the bonds are repaid from project revenues, through the sale of water and power. In other words, it will pay for itself.'" (61 Ops.Cal.Atty.Gen. 373 (No. CV 78-90, Aug. 18, 1978) (quoting Voters Pamphlet, Nov. 8, 1960, p.3).)

Although the Burns-Porter Act contemplates that local taxes may be required to pay SWP obligations, the authority to levy such taxation "is expressly limited to situations where it is necessary...Similarly, the contract with the Metropolitan Water District authorizes taxation only where revenue from the sale of water proves insufficient: 'If any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.'" (*Id.* (quoting Metropolitan Water District of Southern California contract, article 34(a).)

Thus, CVWD's ongoing practice of levying ad valorem property taxes for SWP-related expenses is contrary to the Burns-Porter Act, exceeds the district's taxation authority and violates the California Constitution, even where the revenue collected is actually used to pay SWP invoices. There is no indication that CVWD is unable to raise sufficient funds for SWP-related indebtedness by other means, such as volumetric water rates, which would place less of a disproportionate burden on non-agricultural property owners like Claimants. Indeed, other water districts fund the SWP through water rates and other means without relying on ad valorem property taxes.

Moreover, CVWD cannot levy ad valorem property taxes exceeding the 1% cap established by Proposition 13 to pay indebtedness that was not actually approved by the voters prior to enactment of Proposition 13. For obligations not approved prior to Proposition 13, ad valorem property taxes must be capped at 1%. *See Howard Jarvis Taxpayers Ass'n v. County of Orange* (2003) 110 Cal.App.4th 1375, 1384. "Preexisting obligations are the exception to Proposition 13; therefore, they must be specific, real, and existing. If they are not, the tax is barred." *Id.* Indeed, the exception to Proposition 13's 1% tax limit "is a safety net; it is not an open checkbook." *Id.* at 1387. CVWD may not impose and collect ad valorem taxes above the 1% limit by simply labeling the taxes as "SWP" related. To the extent that CVWD and/or Riverside County have Imposed SWP Taxes to pay for SWP projects added after Proposition 13 was enacted (such as, for example, the anticipated California WaterFix project), such taxes are void, invalid and unconstitutional.

The true extent of the unconstitutional imposition, collection and diversion of funds is not fully known at this time. Among other things, publically available information about the collection and use of funds does not fully account for CVWD's application of the amounts collected as SWP Taxes, and Claimants have not been provided with adequate information to ascertain the true

purpose for which such taxes are levied and collected. Similarly, the invoices sent to Claimants by the Riverside County Tax Assessor fail to provide adequate or accurate information regarding the true nature, purpose and/or use of the funds imposed and collected.

Proposition 218 Violations

As explained above, the SWP Taxes Imposed by CVWD and/or Riverside County are being used for purposes other than satisfying CVWD's pre-approved SWP obligations. As such, CVWD and/or Riverside County are imposing and collecting unconstitutional local taxes, assessments, fees or other charges through the guise of SWP-related ad valorem taxes in order to circumvent the requirements of Proposition 218. For example, documents show that CVWD is diverting funds raised from SWP Taxes to the East Whitewater Replenishment Fund, the Groundwater Replenishment Fund and other water services, without any regard for compliance with Proposition 218.

Proposition 218 (also known as the "Right to Vote on Taxes Act") was approved by California voters in 1996. Among other things, Proposition 218 states that "local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Prop. 218, §2). It further states that the proposition should be liberally construed "to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, §5).

In particular, Proposition 218 focuses on exactions (whether they are called assessments, taxes, fees or charges) that are directly associated with property ownership. Under Proposition 218, the only levies which can be imposed on real property are the following:

1. The ad valorem property tax imposed pursuant to Article XIII and Article XIII A of this Constitution.
2. Any special tax receiving a two-thirds vote pursuant to Article XIII A, Section 4.
3. Assessments as provided by this article.
4. Fees or charges for property related services as provided by this article.

Under Proposition 218, "assessments" are levies upon real property by an agency for a special benefit conferred upon the real property. (Cal. Const. art. XIII D, §2, subd. (b)). Proposition 218 provides that "[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are

assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel.” (*Id.*) As the courts interpreting this Proposition have explained, “The general public should not be required to pay for special benefits for the few and the few specially benefitted should not be subsidized by the general public.” *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545.

In this case, CVWD and/or Riverside County have violated these requirements because property owners are being forced to pay exactions which exceed the reasonable cost of the proportional special benefit conferred on their particular parcel, if any special benefit is conferred at all. In particular, agricultural property owners are receiving special benefits which are being subsidized by Claimants. Furthermore, it appears that the assessments are not supported by a detailed engineer’s report as required by Proposition 218, and that CVWD has made no effort to determine the proportional special benefit derived by the various parcels within its service area.

Proposition 218 also sets forth the following requirements for property-related fees and charges: “A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service. (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed. (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel. (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner in question... (5) No fee or charge may be imposed for general government services...”

CVWD and/or Riverside County have violated each of these Proposition 218 requirements because the amounts unconstitutionally collected as SWP Taxes are not related to the actual cost of providing water to each of the Claimants’ particular properties. The revenues exceed funds that are required to provide water to Claimants, are diverted to purposes other than SWP-related expenses, exceed the proportional cost of the water service attributable to each property, are not actually used or available to each of the Claimants, and appear to be diverted to general CVWD purposes.

In particular, revenues are raised based on the assessed value of the Claimants’ respective properties without any regard to the actual cost of providing water to the particular properties. Water costs have nothing to do with assessed property values. For example, developed, urban land tends to have a higher assessed value than agricultural land even though agricultural properties tend to use more water. As a result, Claimants are forced to pay much more for water-related services even though it does not cost more to provide water to them and they may not actually derive any benefit from all of the services paid for by the revenue generated.

CVWD is also diverting the revenue to purposes (including, without limitation, the East Whitewater Replenishment Fund and the Groundwater Replenishment Fund) which disproportionately benefit agricultural properties. Some properties within CVWD's service area do not benefit from such programs at all. For instance, it appears that CVWD has diverted millions of dollars to services that benefit only those properties located in the East Whitewater area. Based on CVWD's publically available financial information, it appears that approximately \$19 million was unconstitutionally diverted to East Whitewater services in 2017 alone. Such improper diversions from the time period 2014 through 2018 are estimated to be over \$60 million.

In addition, since revenues are raised based on assessed property value, it is apparent that CVWD made no effort to perform a cost of service study in compliance with Proposition 218. In other words, CVWD did not perform a study to determine the actual cost of providing water to the particular properties in its service area to ensure that the property-related fees and charges it imposed comply with Proposition 218's requirements. The fact that no such study was conducted demonstrates that CVWD will not be able to meet its burden of showing that the revenues assessed and collected are proportional to the cost of water service attributable to each particular parcel in its service area that is subject to the SWP Taxes.

Furthermore, CVWD did not comply with the notice and hearing provisions for assessing property-related assessments, fees and/or charges that are set forth in Proposition 218.

Because Proposition 218's requirements for property-related assessments, fees and charges have not been met, the SWP Taxes imposed by CVWD and/or Riverside may constitute general or special "taxes" requiring voter approval. General taxes require a majority vote of registered voters, and special taxes require a two-thirds voter approval. (Cal. Const. art. XIII C, §2).

In 2010, Proposition 26 was enacted to provide a more specific definition of state and local "taxes." Pursuant to Proposition 26, all revenue measures imposed by local governments are "taxes" unless the measure falls within one of the following seven enumerated exemptions:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing

agricultural marketing orders, and the administrative enforcement and adjudication thereof.

4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
6. A charge imposed as a condition of property development.
7. Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

(Cal. Const. art. XIII C, §1, subd. (e)).

The SWP Taxes that are the subject of this Claim do not fall within any of the seven enumerated exemptions. Accordingly, they may be deemed local “taxes” subject to voter approval requirements. Because CVWD and/or Riverside County have Imposed such “taxes” without any prior approval from the voters (and continue to do so), the taxes are unconstitutional, void and invalid under Proposition 218.

SWP Reserves

By in or about 2012, CVWD and/or Riverside had collected millions of dollars from Claimants through the Imposition of SWP Taxes, and CVWD placed certain of these monies in a segregated, restricted SWP Reserve Fund. In accordance with the law discussed above, those ad valorem tax funds could only be used to repay the SWP debt which was approved prior to the passage of Proposition 13 (including fixed and variable SWP expenses). Moreover, CVWD’s own internal documents acknowledge that the SWP Reserves were in a “restricted” fund that could only be used to pay SWP-related invoices. In violation of such laws and restrictions, CVWD transferred millions of dollars of SWP Reserves to other funds and for other purposes including, without limitation, the Groundwater Replenishment Fund.

The fact that CVWD and/or Riverside have continued to Impose SWP taxes on Claimants in excess of actual SWP invoices further demonstrates that the SWP Reserves were misdirected and not spent for lawful purposes. CVWD has failed to adequately account for its expenditure of the SWP Reserves. However, upon information and belief, CVWD still has millions of dollars of SWP Reserves (including interest accrued thereon) which must either be returned to Claimants or applied toward pre-Proposition 13 SWP debt in a manner that reduces the SWP Taxes Imposed on Claimants in the future.

Summary

The SWP Taxes which are the subject of this Claim are unlawful, void and invalid pursuant to Proposition 13, Proposition 218 and/or other applicable law whether they are characterized as taxes, assessments, fees or charges.

Among other things, the SWP Taxes (1) do not comply with the requirements for ad valorem property taxes under Proposition 13 because they exceed 1% of property values and are not necessary to pay SWP-related debt that was approved prior to the enactment of Proposition 13, (2) do not comply with the requirements for local "taxes" because they were not approved by the voters or otherwise subject to an exemption expressly set forth in Proposition 26, and (3) do not comply with the requirements for property related assessments, fees or charges under Proposition 218 because, among other reasons, they are not proportional to the special benefit or service actually received by Claimants' particular properties.

Accordingly, the Imposition and misuse of the SWP Taxes and Reserves as described herein violate the California Constitution and/or other applicable law. Any and all funds collected for the stated purpose of paying SWP expenses (including any and all interest accrued thereon) must be applied to lawful purposes which directly pay for SWP's fixed and variable expenses or, if not, must be refunded.

6. WERE POLICE OR PARAMEDICS CALLED?

No.

7. IF PHYSICIAN/HOSPITAL WAS VISITED DUE TO INJURY, INCLUDE DATE OF FIRST VISIT AND HOSPITAL'S NAME, ADDRESS AND PHONE NUMBER

Not applicable.

8. WHY DO YOU CLAIM THE COUNTY IS RESPONSIBLE?

Among other things, Riverside imposed, extended, increased and/or collected the "ad valorem property taxes" which are the subject of this claim. The "ad valorem property taxes" which are the subject of this claim appear as a "charge" on Claimants' Riverside County Secured Property Tax Bills.

9. NAMES OF ANY COUNTY EMPLOYEES (AND THEIR DEPARTMENTS) INVOLVED IN INJURY OR DAMAGE (IF APPLICABLE)

CVWD including, without limitation, its board members, officers and/or other person(s) in control of the matters alleged herein.

Riverside County including, without limitation, the Riverside County Tax Assessor, and the County's agencies, supervisors and/or other person(s) in control of the matters alleged herein.

10. WITNESSES TO DAMAGE OR INJURY

CVWD's current and former board members, employees and staff;
CVWD's current and former water consultants;
CVWD's current and former accountants and auditors; and
CVWD's current and former legal consultants.

Coachella Valley Water District
51501 Tyler Street
Coachella, CA 92236

Riverside County Tax Assessor
4080 Lemon St., 1st Floor
Riverside, CA 92501

Claimants (including, without limitation, Randall C. Roberts)
c/o Costell & Cornelius Law Corp.
Jeffrey Lee Costell, Esq.
Sara M. McDuffie, Esq.
1299 Ocean Ave., Ste. 450
Santa Monica, CA 90401
(310) 458-5959

Claimants' investigation is ongoing and it is anticipated that there will be additional witnesses.

11. LIST DAMAGES INCURRED TO DATE

Claimants have been damaged by violations of Proposition 13 because, among other things, they have been forced to pay ad valorem property taxes above 1% of the assessed value of their respective properties for purposes other than paying CVWD's pre-approved SWP obligations and for purposes that disproportionately benefit agricultural property owners and water users.

Moreover, Claimants have been forced to pay these valorem taxes even though SWP expenses could be funded through other, more equitable means such as volumetric water rates and/or application of SWP Reserves.

Claimants have been damaged by violations of Proposition 218 because, among other things, they have been forced to pay property-related assessments, taxes, fees or charges under the guise of purported SWP-related ad valorem taxes, which were not approved by the voters, do not satisfy Proposition 218's requirements for property-related assessments, fees and charges, and disproportionately benefit agricultural property owners and water users.

Accordingly, any and all ordinances, resolutions or other acts which impose, extend, increase and/or enforce such unconstitutional exactions should be declared void, invalid and unenforceable, and CVWD and Riverside County should be enjoined from their continued collection and enforcement of such unconstitutional exactions. In addition, Claimants are entitled to restitution, credits, refunds and/or reimbursement of any and all amounts CVWD and/or Riverside County collected from Claimants in violation of the Constitution or other applicable laws.

This claim is based on preliminary investigation, and there may be other grounds on which the subject SWP Tax is subject to legal challenge. Nothing contained or omitted herein or in any other claim or communication shall constitute or is intended to or shall operate as an admission or as an election, waiver or relinquishment of or limitation on any right, remedy or defense, at law or in equity, all of which are reserved.

Damages exceed \$10,000. The claim would be filed as an unlimited civil class action case and/or other unlimited civil case.

Date: August 30, 2018

Signature:



Costell & Cornelius Law Corporation

Jeffrey Lee Costell, Esq.

Sara M. McDuffie, Esq.

Attorneys for Claimant Randall C. Roberts

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1299 Ocean Ave., Suite 450, Santa Monica, CA 90401.

On August 30, 2018, I served the foregoing document described as, **AMENDED AND RESTATED CLAIM FOR DAMAGES**, as follows:

(X) **By CERTIFIED MAIL, RETURN RECEIPT REQUESTED:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Santa Monica, California.

Clerk of the Board of Supervisors
Attn: Claims Division
P.O. Box 1147, 4080 Lemon St., 1st Floor
Riverside, CA 92502-1147

() I caused such envelope(s) to be deposited in the mail at Santa Monica, California.

() **BY OVERNIGHT MAIL:** I placed a true copy of said document in a sealed **FEDERAL EXPRESS PACKAGE** addressed as indicated above, with delivery fees provided for, and, deposited said envelope in a box regularly maintained by **FEDERAL EXPRESS**, for next day delivery.

() **BY FACSIMILE TRANSMISSION:** I caused such documents to be personally delivered to the parties at the facsimile numbers listed above.

() **BY PERSONAL SERVICE:** I caused such documents to be personally delivered to the parties at the addresses listed below:

(X) Executed on August 30, 2018, at Santa Monica, California.

(X) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

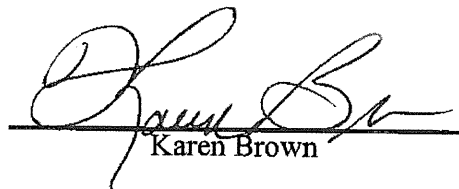

Karen Brown

Exhibit 8



OFFICE OF THE
CLERK OF THE BOARD OF SUPERVISORS
1st FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060 FAX: (951) 955-1071

COPY

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

October 18, 2018

RANDALL C. ROBERTS
c/o JEFFREY LEE COSTELL, ESQ. & SARA M. MCDUFFIE, ESQ.
COSTELL & CORNELIUS LAW CORP.
1299 OCEAN AVENUE, STE. 450
SANTA MONICA, CA 90401

RE: NOTICE OF REJECTION OF AMENDED CLAIM

Claimant: ROBERTS, Randall C.
Date of Loss: 07/01/13
Claim No: 232-18
Date Claim Received: 06/05/18
Date Amended Claim Received: 09/04/18

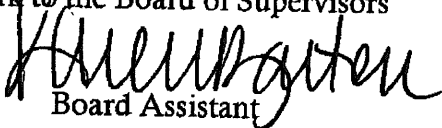
Notice is hereby given that the claim you presented to the Clerk of the Board of Supervisors was rejected by the Board on October 18, 2018.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Revenue and Taxation Code section 5141.

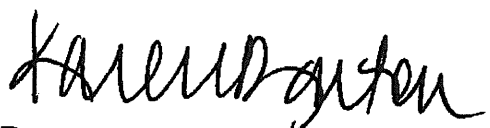
Kecia Harper-Ihem
Clerk to the Board of Supervisors

By:


Board Assistant

I declare that my business address is 1st Floor, County Administrative Center, 4080 Lemon Street, Riverside California, that I am a citizen of the United States of America, employed by the County of Riverside and am not a party to the action. On the date stated below I mailed the foregoing notice by depositing a copy thereof in the outgoing mail at Riverside, California, in a sealed envelope, with postage prepaid, addressed to the person(s) listed above. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Riverside, California on October 18, 2018.


Karen Barton, Board Assistant